No. 11018
WICHITA BOARD OF COMMERCE ET AL
V
DIRECTOR GENERAL OF RAILROADS, AS AGENT, ALEXANDRIA & WESTERN RAILWAY COMPANY ET AL

No. 12268
BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF SOUTH DAKOTA
V
CHICAGO & NORTH-WESTERN RAILWAY COMPANY ET AL

No. 13001
CHAMBER OF COMMERCE OF KANSAS CITY, MO.,
V
ALEXANDRIA & WESTERN RAILWAY COMPANY ET AL

No. 13273
NEBRASKA LIVESTOCK CASE

No. 13619
ROSS BROTHERS HORSE & MULE COMPANY ET AL
V
UNION PACIFIC RAILROAD COMPANY ET AL

No. 13627

BURNETT-YOUNT HORSE & MULE COMPANY ET AL

V

ABILENE & SOUTHERN RAILWAY COMPANY ET AL

It appearing, That on November 10, 1924, the Commission issued its report and entered its order in No. 12358, Investigation and Suspension Docket No. 1483 and Nos. 11018, 13001, 13619 and 13627, and by orders of January 12, and March 16, 1925§ modified the said order in certain particulars and reopened the proceedings for further hearing as to certain rates;

It further appearing, That on July 30, 1925, the Commission issued its report and entered its order in Investigation and Suspension Docket No. 2389, and by order of January 4, 1926, reopened that proceeding and all of the proceedings referred to in the preceding paragraph for further hearing, and by order of February 6, 1928, modified the said orders of March 16, 1925, and January 4, 1926, so as to restrict the reopened proceedings to rates and minimum weights for the future only;

It further appearing, That on February 13, 1923, Division 3, issued its report and entered its order in No. 12268, and by orders of April 23 and 27, May 14,

and June 21, 1923, modified the said order in certain respects;

It further appearing, That on April 15, 1924, the Commission issued its report in No. 13273, and by order of January 4, 1926, reopened that proceeding and No. 12268 referred to in the next preceding paragraph for further hearing respecting the rates and minimum weights on horses and mules;

It further appearing, That such further hearing was held and the Commission by order of February 1, 1932, again reopened all of the above entitled proceedings for further hearing for the purpose of supplementing the records already made;

And it further appearing, That such supplemental further hearing was held and on July 24, 1933, the Commission issued its report on further hearing, which said report and the reports and orders above referred to are made parts hereof;

It is ordered, That the order of November 10, 1924, in No. 12358 and related cases, as subsequently modified, the order of July 30, 1925, in Investigation and suspension docket No. 2389, and the order of February 13, 1923, in No. 12268, as subsequently modified, in so far as it involves the rates and minimum weights on horses and mules be, and they are hereby, vacated and set aside.

It is further ordered, That defendants and respondents in the above entitled proceedings, according as they participate in the transportation, be, they are hereby, notified and required to cease and desist, on or before March 8, 1934, and thereafter to abstain, from publishing, demanding, or collecting for the interstate transportation of horses, mules, burros, and asses, in carloads, from and to the points designated in the next seven succeeding paragraphs hereof, rates and minimum weights which exceed those prescribed therein.

It is further ordered, That defendants in Nos. 12358, 13619, and 13627, according as they participate in the transportation, be and they are hereby, notified and required to establish, on or before March 8, 1934, upon notice to this Commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act, and thereafter to maintain and apply to the interstate transportation of horses and mules, in carloads, from and to Fort Worth, Tex., to and from stations on the said defendants' lines in Kansas, Oklahome, Arkansas, Texas, that part of Louisiana west of the Mississippi River, that part of Missouri south of the Missouri River, that part of Colorado on and south of the lines of the Chicago Rock Island & Pacific Railway Company and Union Pacific Railroad Company through Limon to Denver and on and east of the main

line of the Colorado & Southern Railway Company south of Denver through Pueblo and Trinidad to the Colorado-New Mexico State Line, and that part of New Mexico on ad east of the line of the Colorado & Southern Railway Company, rates which shall not exceed 115 percent of the rates on fat cattle from and to the same points, prescribed in *Livestock-Western District Rates*, 172 I. C. C. 1, 179 I. C. C. 104, and 190 I. C. C. 611, from and to the same points.

It is further ordered, That defendants in No. 11018, according as they participate in the transportation, be, and they are hereby, notified and required to establish, on or before March 8, 1934, upon notice as aforesaid, and thereafter to maintain and apply to the transportation of horses and mules, in carloads, from Wichita, Kans., to destinations on the said defendants' lines in Arkansas, Texas, and that part of Louisiana west of the Mississippi River, rates which shall not exceed 115 percent of the rates on fat cattle, prescribed in *Livestock-Western District Rates*, supra, from and to the same points.

It is further ordered, That respondents in Investigation and Suspension Docket No. 1483, according as they participate in the transportation, be, and they are hereby, notified and required to establish on or before March 8, 1934, upon notice as aforesaid, and thereafter to maintain and apply to the transportation of horses and mules, in carloads, from Wichita, Kans., and Kan-

sas City, Mo., to destinations in Arkansas and in that portion of Louisiana west of the Mississippi River named in the schedules heretofore under suspension in this proceeding, rates which shall not exceed 115 per cent of the rates on fat cattle, prescribed in *Livestock-Western District Rates, supra,* from and to the same points.

It is further ordered, That defendants in No. 13001, according as they participate in the transportation, be, and they are hereby, notified and required to establish, on or before March 8, 1934, upon notice as aforesaid, and thereafter to maintain and apply to the transportation of horses, mules, asses, and burros, in carloads, from Kansas City, Mo., to destinations in Texas and that portion of Louiiana west of the Mississippi River, rates which shall not exceed 115 per cent of the rates on fat cattle, prescribed in *Livestock-Western District Rates,* supra, from and to the same points.

It is further ordered, That respondents in Investigation and Suspension Docket No. 2389, according as they participate in the transportation, be and they are hereby, notified and required to establish, on or before March 8, 1934, upon notice as aforesaid, and thereafter to maintain and apply to the transportation of horses and mules, in carloads, from and to Fort Worth, Tex., Oklahoma City, Okla., Wichita, Kans., and Kansas City, St. Joseph and St. Louis, Mo., to and from points in Texas differential territory and New Mexico named in

the schedules heretofore under suspension in this proceeding, rates which shall not exceed 115 per cent of the rates on fat cattle, prescribed in *Livestock-Western District Rates*, supra, from and to the same points.

It is further ordered, That defendants in No. 12268, according as they participate in the transportation, be, and they are hereby, notified and required to establish, on or before March 8, 1934, upon notice as aforesaid, and thereafter to maintain and apply to the transportation of horses and mules, in carloads, from points in South Dakota to destinations in Minnesota, Wisconsin, Iowa, Missouri, and Nebraska, and in that portion of Illinois embraced in the Western District, and to stations intermediate thereto, rates which shall not exceed 115 percent of the rates on fat cattle, prescribed in *Livestock-Western District Rates*, supra, from and to the same points.

It is further ordered, That in connection with the rates prescribed in the six preceding paragraphs here- defendants and respondents referred to therein ...uld observe a minimum carload weight of 23,000 pounds.

And it is further ordered, That this order shall continue in force until the further order of the Commission.

BY THE COMMISSION;

(SEAL) GEORGE B. McGINTY,
Secretary.

EXHIBIT D

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 10th day of November, A. D. 1924.

Fourth-Section Order No. 9059

Livestock Between Points in Southwestern and Western Territories

Applications Nos. 461, 462, 621, 673, and 678.

Filed by F. A. Leland, Agent.

By the above-numbered applications, carriers parties thereto, ask, among other things, for authority to continue to charge for the transportation of livestock, in carloads, between points in Texas on the one hand, and points in the States of Louisiana, Arkansas, Oklahoma, Kansas, Missouri, Nebraska, Colorado, and Kentucky on the other, rates which are in contravention of the provisions of the amended fourth section of the interstate commerce act. A hearing having been held upon these applications in so far as they relate to the rates hereinbefore described, and full investigation of the matters and things involved therein having been had, and the commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That carriers parties to the above-numbered applications and other carriers respondents and defendants in *Texas Live Stock Shippers Protective League* v. *Director General* and cases consolidated therewith be, and they are hereby, authorized to establish and maintain over all routes between Fort Worth, Tex., Wichita, Kans., Kansas City, Mo., St. Joseph, Mo., St. Louis, Mo., and Oklahoma City, Okla., on the one hand, and points in the territory described in the appendix to the said report, on the other, the lowest rates prescribed or approved in the said report as maximum rates over any route between the said points, and to maintain higher rates from, to, and between intermediate points, provided that the rates from, to, and between the said intermediate points shall not exceed the scales of rates prescribed in the said report as maximum rates for application at such intermediate points and shall in no case exceed the lowest combination.

It is further ordered, That except as hereinbefore authorized by the next preceding paragraph hereof, those portions of fourth-section applications Nos. 461, 462, 621, 673, and 678 by which carriers ask for authority to continue to charge for the transportation of livestock, in carloads, between points in Texas, on the one hand, and points in the States of Louisiana, Arkansas, Oklahoma, Kansas, Missouri, Nebraska, Colorado, and Kentucky, on the other, rates which are in contravention of the provisions of the fourth section of

the interstate commerce act be, and they are hereby, denied, effective February 20, 1925.

And it is further ordered, That tariffs containing rates revised in accordance with the terms of this order shall be made effective on statutory notice.

By the commission.

George B. McGinty,
Secretary.

[SEAL.]

EXHIBIT E

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 30th day of July, A. D. 1925.

Fourth Section Order No. 9183

It is ordered, That respondents in the above-entitled proceeding be, and they are hereby, authorized to establish and maintain over all routes between Fort Worth, Tex., Wichita, Kans., Kansas City, St. Joseph, and St. Louis, Mo., and Oklahoma City, Okla., on the one hand, and points in Texas differential territory as described in the report attached hereto, and which is hereby made a part hereof, also points in New Mexico, on the other, the lowest rates on horses and mules prescribed in the said report as maximum rates over any route between said points, and to maintain higher rates from, to, and between intermediate points; provided, that rates from, to, or between said intermediate points shall not exceed the scale of rates prescribed in docket No. 12358, *Horse and Mule Rates in the Southwest, 1924*, 93 I. C. C. 479, by more than the differentials prescribed in the said report made a part hereof, and shall in no case exceed the lowest combination.

By the commission:

GEORGE B. McGINTY,

[SEAL] Secretary.

EXHIBIT F

Fourth Section Order No. 11340

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 24th day of July, A. D. 1933

WESTERN HORSE AND MULE RATES

By fourth section applications Nos. 461, 462, 621, 673 and 678 carriers parties thereto by F. A. Leland, Agent, ask, among other things, for authority to continue rates on horses, mules, burros, and asses, in carloads, between points in Arkansas, Kansas, Nebraska, Oklahoma, South Dakota, Texas, eastern Colorado, eastern New Mexico, southern Missouri, and western Louisiana without observing the long-and-short-haul provision of section 4 of the Interstate Commerce Act. A hearing having been held on these applications in so far as they relate to the rates referred to above and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report, No. 12358, *Texas Live Stock Shippers Protective League et al.* v. *Director General, As Agent, Abilene & Southern Railway Company et al.* (mimeographed), containing its findings of fact and conclusions thereon, which report and applications are hereby referred to and made a part hereof:

It is ordered, That those portions of fourth section applications Nos. 461, 462, 621, 673 and 678 in which

relief is prayed to continue rates for the transportation of horses, mules, burros and asses, in carloads, between points in Arkansas, Kansas, Nebraska, Oklahoma, South Dakota, Texas, eastern New Mexico, that part of Colorado east of Colorado common points, that part of Missouri south of the Missouri River, and that part of Louisiana west of the Mississippi River, without observing the long-and-short-haul provision of section 4 of the Interstate Commerce Act, be, and the same are hereby, denied, effective February 5, 1934.

It is further ordered, That fourth section order No. 9059, entered November 10, 1924, in applications named in the preceding paragraph, fourth section order No. 9183, entered July 30, 1925, in *Rates on Horses and Mules In The Southwest*, 102 I. C. C. 87, and fourth section order No. 9711, entered December 30, 1927, in application No. 13253, be, and the same are hereby, vacated and set aside, effective February 5, 1934.

By the Commission:

(SEAL.) GEORGE B. McGINTY,
Secretary.

[fol. 119] IN UNITED STATES DISTRICT COURT

RECORD ENTRY OF ARGUMENT AND SUBMISSION—March 24, 1934

This cause coming on to be heard at this time the parties appearing by their Attorneys; the United States and the Interstate Commerce Commission with leave of Court file Answers herein; Counsel make arguments, and briefs to be submitted; plaintiff is granted 15 days and defendants allowed ten days thereafter to file briefs. All briefs and exhibits to be lodged with the Clerk.

[fol. 120] IN UNITED STATES DISTRICT COURT

ANSWER OF UNITED STATES OF AMERICA TO AMENDED BILL OF COMPLAINT—Filed March 24, 1934

United States, the above-named defendant, for answer to the amended bill of complaint filed herein against it says:

I

United States admits for the purposes of this suit that the facts alleged in the opening paragraph, and in sections numbered "I" and "II" of the amended bill of complaint are true; except that it disclaims knowledge concerning the allegation in the opening paragraph that leave has been granted petitioners to file the amended bill of complaint.

II

United States admits that the facts and recitals alleged and set forth in section numbered "III", pages 8 to 24, inclusive, of the amended bill of complaint are substantially correct and true; but denies all conclusory words, phrases and statements contained in said section "III".

III

United States denies the allegations contained and set forth in section numbered "IV", pages 24 to 53, inclusive, of the amended bill of complaint; denies that the Interstate Commerce Commission's orders therein mentioned are invalid, unlawful or void for the reasons alleged in said sec-

tion "IV", or for any of said reasons, or for any other reason; and United States particularly and specifically denies that the Commission's said orders, or the findings on which said orders rest are unsupported by the evidence duly heard and considered by the Commission; and United States further denies all the allegations in said section "IV" expressly made or to the effect that the Commission acted arbitrarily, unreasonably, capriciously, contrary to or without evidence, or without full authority of law, in any respect, in making and issuing its said orders mentioned in said section "IV".

[fol. 121] IV

Except as herein expressly admitted, United States denies each and every allegation contained in the amended bill of complaint and in the several sections and subdivisions thereof.

V

Further and affirmatively answering the amended bill of complaint, United States admits and alleges that the Commission made and issued the reports and orders therein described and included as Exhibits A, B, C, D, E and F to the amended bill; and, United States alleges that before rendering said report and issuing said orders, the Commission held and conducted full hearings, at which all interested parties, including complainants, were afforded full opportunity to present their evidence, briefs and oral arguments; that upon voluminous oral and documentary evidence so heard and received and duly and properly considered and weighed by it, the Commission made and rendered its report, Exhibit A to the amended bill, containing its findings and conclusions of fact, that said findings and conclusions are fully supported by and are in accordance with the evidence of record before the Commission; that the Commission gave full and proper weight to all, and did not reject, ignore or improperly consider any, relevant and material evidence; that in so making and issuing its said report and said orders the Commission acted pursuant to and entirely within authority validly conferred upon it by statute.

Wherefore, having fully answered the amended bill of complaint, United States prays that the relief therein prayed be denied and the amended bill of complaint dis-

missed with costs to the complainants, and that it have the benefit of such other and further orders, decrees or relief as may be just and proper.

Elmer B. Collins, Special Assistant to the Attorney General. Maurice M. Milligan, United States At-
[fol. 122] torney. Harold M. Stephens, Assistant Attorney General.

Duly sworn to by Elmer B. Collins. Jurat omitted in printing.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

ANSWER OF INTERSTATE COMMERCE COMMISSION TO AMENDED BILL OF COMPLAINT—Filed March 24, 1934

The Interstate Commerce Commission, hereinafter called the Commission, intervening defendant in the above-entitled suit, now at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the amended bill of complaint contained, for answer thereunto, or unto so much or such parts thereof as it is advised that it is material for it to answer, answers and says:

I

Answering chapters I to III, both inclusive of the amended bill of complaint, the Commission admits, for the purposes of this suit, that the allegations of said chapters are true, except that the Commission denies that the por-
[fol. 123] tions of said chapters which purport to state parts, or the substance, of reports and orders of the Commission in certain therein designated proceedings, contain the full, true or correct statements of the Commission in its said respective reports and orders, and the Commission respectfully refers the Court to its official reports and records for full, true and correct information as to its actions and expressions in the said respective proceedings; and except that the Commission denies that its denial of the carriers' petition for reconsideration and modifica-

tion of its findings and conslusions in Docket No. 12358 was "summary" in the sense that the Commission denied said petition without due consideration, and the Commission alleges that its action with respect to said petition was taken after full and careful consideration of said petition and the facts bearing upon the same.

II

Answering chapters IV and V of the amended bill of complaint, the Commission admits and alleges that in a proceeding then pending before it, entitled No. 12358, Western Horse and Mule Rates; Texas Livestock Shippers Protective League et al. v. Director General, etc., et al., it made and issued the report dated July 24, 1933, a copy of which, including appendices A, B, C, and D thereto, is attached to the amended bill of complaint, marked Exhibit "A"; that said report will be published at 195 I. C. C. 417; that said report also embraced all the proceedings, the numbers and titles of which are set out in the footnote at the bottom of the first page of said Exhibit "A" (page 417 of 195 I. C. C.); that with the report and as part thereof, the Commission made and issued Fourth Section Order No. 11340, dated July 24, 1933, a copy of which is attached to the amended bill of complaint, marked Exhibit "F"; that subsequently, on December 11, 1933, the Commission, pursuant to said report, made and entered its order in the premises, a true copy of which order is attached to the amended bill of complaint as Exhibit "B" [fol. 124] thereto; that said proceedings presented to the Commission the question of lawful freight rates on horses, mules, burros and asses between points in southwestern and western territories and primary markets such as Kansas City and St. Louis, Mo., and Wichita, Kans.; that in said proceedings all parties were accorded the full hearing provided for in the Interstate Commerce Act; that in the hearings in said proceedings a large volume of testimony and other evidence bearing upon the matters covered by said report and order was submitted to the Commission for consideration, including testimony and other evidence submitted on behalf of petitioners herein by their counsel; that in said hearings and subsequently, both orally and in briefs filed in said proceedings, questions relating to said matters were fully argued and submitted to the

Commission for determination, whereupon the Commission determined said matters and entered and served upon the parties the said report and order of July 24, 1933, and its subsequent order of December 11, 1933; that said report and orders include the Commission's findings of fact, decisions and conclusion, and that, upon the evidence aforesaid and as shown in and by said report, the Commission made the findings and stated the conclusions upon which its orders aforesaid are based.

The Commission respectfully refers the Court to the text of said report and orders for full, complete and accurate information concerning the contents thereof.

The Commission further alleges that the findings and conclusions in said report were and are, and that each of them was and is, fully supported and justified by the evidence submitted to the Commission in said proceedings, as aforesaid.

The Commission further alleges that in making said report and orders it considered and weighed carefully in the light of its own knowledge and experience each fact, circumstance, and condition called to its attention on behalf of the petitioners herein by their counsel, including mat-
[fol. 125] ters covered by the allegations of the amended bill of complaint herein.

The Commission further alleges that said orders were not made or entered either arbitrarily or unjustly, or contrary to the relevant evidence or without evidence to support them, and that in making said orders the Commission did not exceed the authority which had been duly conferred upon it, or exercise that authority in an unreasonable manner.

Further answering chapters IV and V of the amended bill of complaint, the Commission denies that either its findings or conclusions are either arbitrary or contrary to law or void for the reasons set forth in said chapters or elsewhere in the amended bill of complaint or for any other reason, and denies that said orders will cause either irreparable damage or any legal damage whatever to the petitioners; and the Commission further alleges and shows to the Court that its Fourth Section Order No. 11340, of July 24, 1933, Exhibit "F" to the amended bill of complaint herein, which petitioners pray the Court to enjoin and annul, is in form and effect a negative order, over which this Court has no jurisdiction.

Further answering chapters IV and V of the amended bill of complaint, the Commission alleges that the findings contained in said report fully and adequately support said orders.

Except as herein expressly admitted, the Commission denies the truth of each of and all the allegations contained in the amended bill of complaint in so far as they conflict either with the allegations herein or with either the statements or conclusions of fact or findings contained in the aforesaid report and orders.

All of which matters and things the Commission is ready to aver, maintain, and prove as this Honorable Court shall direct, and hereby prays that petitioner's suit be dismissed.

Interstate Commerce Commission, by Nelson Thomas, Attorney. Daniel W. Knowlton, Chief Counsel, of Counsel.

[fol. 126] *Duly sworn to by Wm. E. Lee. Jurat omitted in printing.*

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

DECREE—Filed June 7, 1934

This cause coming on to be heard on the application of the petitioners herein for a final injunction, as prayed for in the bill of complaint, and same having been heard by three judges as required by law sitting as the said district court, and said cause having been submitted upon the original bill and answers thereto and the evidence by the respective parties, and upon oral arguments and briefs, and the court being of the opinion that the petitioners are not entitled to the relief applied for by them,

It Is Ordered, Adjudged And Decreed that the application of the plaintiff for an injunction be and the same is hereby denied, and the amended bill of complaint dismissed and that the petitioners be and they are hereby taxed with the cost of the application.

It is further ordered that this decree shall become effective upon the filing of the same in court.

Given this 7th day of June, 1934.

[fol. 127] Arba S. VanValkenburgh, United States Circuit Judge; Albert L. Reeves, United States District Judge; Merrill E. Otis, United States District Judge.

[File endorsement omitted.]

[fol. 128] IN UNITED STATES DISTRICT COURT.

Findings of Fact and Conclusions of Law Requested by Plaintiffs—Filed June 9, 1934

Plaintiffs, Texas & New Orleans Railroad Company et al., submit and respectfully ask the court to make the following findings of fact and conclusions of law in lieu of the findings of fact and conclusions of law made and announced coincident with and subjoined to its per curiam opinion filed in the above-entitled cause on June 7, 1934:

FINDINGS OF FACT

1. On March 1, 1921, pursuant to the filing of complaint and hearing duly had thereon, the Interstate Commerce Commission made a report and order in its Docket No. 11018, entitled Wichita Board of Commerce et al. v. Director General, As Agent, Alexandria & Western Railway Company, et al. (Exhibit AA, 60 I. C. C. 536), whereby said Commission held and declared in part that the car-[fol. 129] load rates on horses and mules from Wichita, Kans., to points in Arkansas, Louisiana and Texas, as well as to Memphis, Tenn., and points basing thereon, were then and for the future would be unduly prejudicial to the extent that they exceeded or should exceed the rates contemporaneously in effect on like traffic from Kansas City to the same destinations, and directed the defendant carriers (the plaintiffs herein or their predecessors) to remove the prejudice so found to exist.

2. The carriers defendant in said Docket No. 11018 in due course revised their carload rates on horses and mules from Wichita, Kans., to points in Arkansas, Louisiana and

Texas, as well as from Kansas City, so as to conform to the above findings and order of said Commission, it being provided that such revised rates would become effective January 31, 1922, and at later dates, but upon protest of the Chamber of Commerce of Kansas City and others operation of the rates so published was suspended by said Commission until June 30, 1922, and later dates, and inaugurated an investigation thereof under its Investigation and Suspension Docket No. 1483, entitled Horses and Mules from Kansas City, Mo., and Wichita, Kans. to New Orleans, La., Memphis, Tenn., and Other Points. Thereafter, following a hearing and the taking of testimony, by its report of May 29, 1922 (Exhibit AC, 69 I. C. C. 97), said Commission expressed the view that the proposed rates from Wichita and Kansas City did not exceed the limit of reasonableness, but that, without corresponding changes in the rates from St. Louis, they would result in undue prejudice to Wichita and Kansas City shippers and in undue preference of St. Louis shippers, and an order was contemporaneously entered requiring the cancellation of the rates therein under suspension.

3. In the meanwhile, by complaint filed with said Commission July 21, 1921, the Chamber of Commerce of Kansas City assailed the carload rates on horses, mules, asses and burros from Kansas City to points in Texas and Louisiana, such complaint being No. 13001, entitled Chamber of Commerce of Kansas City, Mo. v. Alexandria & Western Rail-[fol. 130] way Company et al. Following the holding of a hearing and the taking of testimony in such complaint, by its report of April 26, 1924 (Exhibit BB, 80 I. C. C. 22), said Commission made the finding that for the future the rates assailed would be unjust, unreasonable, and unduly prejudicial to the extent that they might exceed the rates set out in the appendix to its report, which scale for distances up to 600 miles was said to be based on the class C scale prescribed in the class rate section of the Memphis-Southwestern Investigation, 55 I. C. C. 515, 6.5 cents to be added thereto for each additional 100 miles for distances in excess of 600 miles. An order designed to give effect to such finding was contemporaneously entered, but before it became effective it was set aside by the Commission and the complaint was thereupon consolidated for disposition with other then pending proceedings, as stated below.

4. Subsequent to the institution of No. 11018 there was additionally filed with said Commission as its Docket No. 12358 a complaint entitled Texas Livestock Shippers Protective League et al. v. Director General, As Agent, Abilene & Southern Railway Company, et al., in which the carload rates on horses and mules between Fort Worth, Texas, and points in southwestern and western territories were assailed as being unreasonable and otherwise unlawful, and thereafter there was filed with said Commission as its Docket No. 13619 a similar complaint entitled Ross Bros. Horse and Mule Company et al. v. Union Pacific Railroad Company et al. Likewise, by complaint filed with said Commission as its Docket No. 13627, entitled Burnett-Yount Horse and Mule Co. et al. v. Abilene & Southern Railway Company et al., the carload rates on horses and mules between points in Texas and points in Louisiana, Arkansas, Oklahoma, Kansas, Missouri, Iowa, Illinois, Nebraska, Wyoming, Colorado, New Mexico, Arizona, and California, and to the Mississippi River points of Memphis, Vicksburg and Natchez were assailed as being unreasonable and unlawful. In Nos. 12358, 13619, and 13627, in addition to complaining of the rates for future application, the complainants sought reparation on shipments in the past.

5. After the conclusion of the hearings that were held in Nos. 12358, 13619 and 13627, and upon the submission thereof on oral argument, the Commission reopened its [fol. 131] docket Nos. 11018 and 13001, also its Investigation and Suspension Docket No. 1483, and thereupon consolidated all of such proceedings for disposition. All the proceedings thus consolidated dealt with cognate rates to, from, or between points in the Southwest, including roughly, the States of Arkansas, Louisiana, Oklahoma and Texas. After due consideration the Commission handed down its report of November 10, 1924 (Exhibit QQ. 93 I. C. C. 479), wherein it was stated in part that the evidence was confined principally to the rates between Fort Worth and points in Louisiana, Arkansas, Oklahoma, Missouri, Kansas, Colorado, and New Mexico, and the rates therein prescribed as just and reasonable for the future were accordingly limited to apply between points in Kansas, Oklahoma, and Arkansas, Texas common-point territory (approximately the eastern half of Texas), that part of Louisiana west of the Mississippi River, that part of Missouri

south of the Missouri River and the eastern portion of Colorado and the northeastern corner of New Mexico as more particularly defined in said report, so far as the issues raised in the consolidated cases would permit.

6. Although stating on pages 482 and 492 of its said report (Exhibit QQ) that the complainants sought the establishment of carload rates on horses and mules which should not exceed by more than 115 per cent the rates on fat cattle that had been prescribed to apply between points in Texas and between Shreveport and Texas points in the so-called Shreveport case, 48 I. C. C. 312, and later extended to apply between Texas points and Natchez in Natchez Chamber of Commerce v. A. H. T. Ry. Co., 52 I. C. C. 558, the Commission nevertheless declined to relate the rates therein prescribed to apply on horses and mules to the beef cattle rates, but on the contrary, as stated on page 492 of its said report, adopted as just and reasonable for application to the horse and mule traffic in the territory involved, termed for convenience the Southwest, a commodity scale of rates that had been prescribed in the commodity rate section of the Memphis-Southwestern Investigation, 77 I. C. C. 473, 595, subject to slight modifications made therein. On page 26 of Exhibit C-175 in the record before the Commission it is shown by a witness for one of the complainants that the single-line rates on horses and mules so prescribed ranged [fol. 132] from 117.6 to 144.0 per cent of the then current cattle rates, and bore no uniform percentage relation thereto. Appropriate modifications were likewise made by the Commission in the orders previously entered by it in Nos. 11018 and 13001, as also in its Investigation and Suspension Docket No. 1483, besides which the Commission contemporaneously entered its Fourth Section Order No. 9059 whereby the carriers were enabled to establish and maintain the prescribed rates without observing the long-and-short-haul clause of section 4 of the Interstate Commerce Act. A further finding was made in said report that the assailed rates on shipments in the past were unreasonable only to the extent that they exceeded the applicable combinations of rates to and from intermediate points, and in such instances reparation was awarded the complainants in Nos. 12358, 13619, and 13627.

7. By order dated March 16, 1925 (Exhibit QQ), prior to the effective date of the rate order entered by it in No.

12358 and consolidated cases on November 10, 1924, upon joint petition of the Public Service Commission of Kansas and the Chamber of Commerce of Kansas City, the Commission reopened the aforesaid proceedings for further hearing and consideration with respect to the interstate rates from or to points in Kansas, Colorado, and Southern Missouri to or from Wichita, Kansas City, St. Joseph and St. Louis, but with that exception the defendant carriers (plaintiffs herein) established generally throughout the territory previously described therein, effective May 20, 1925, the single-line and joint-line scales of rates prescribed by the Commission in its said report and order of November 10, 1924 (Exhibit QQ).

8. In so establishing and making effective such prescribed rates, however, pursuant to a finding by the Commission on page 490 of its said report (Exhibit QQ) that the record before it was insufficient to enable it to determine interstate rates to Fort Worth from Texas differential territory (approximately the western half of Texas) and from New Mexico, the carriers elected to revise their carload rates on horses and mules between points in said Texas differential territory and New Mexico and the southwestern markets of Fort Worth, Oklahoma City, Wichita, Kansas City, St. Joseph, and St. Louis by publishing rates based [fol. 133] on the prescribed scales plus the difference between the class A rates from St. Louis to El Paso and those from St. Louis to Texas common-point territory, but upon protest the Commission suspended that portion of the revised rate adjustment so published by order entered in its Investigation and Suspension Docket No. 2389. Pursuant to hearing duly held in May, 1925, in its report in that proceeding dated July 30, 1925 (Exhibit PP, 102 I. C. C. 87), the Commission found that the suspended rates had not been justified but further held that for the future the respondent carriers (plaintiffs herein) would be authorized to maintain maximum reasonable rates for application to interstate carload shipments of horses and mules between points in Texas differential territory and New Mexico and the aforesaid market points that would be constructed on the basis of the scales prescribed in its report and order in No. 12358 (Exhibit QQ) for the entire distance plus the differentials prescribed in the appendix to its report of July 30, 1925 (Exhibit QQ) for the distances outside the

territory to which its 1924 order (Exhibit QQ) had application. The differential rates so authorized were thereafter in due course published by the carriers and became effective, and are now in effect. To enable the carriers to make such authorized rates operative the Commission issued contemporaneously with its report its Fourth Section Order No. 9183.

9. In May, 1925, pursuant to the Commission's aforesaid order of March 16, 1925, a further hearing was held in No. 12358 and consolidated cases before Examiner J. F. Eshelman of the Commission's staff with respect to the interstate rates from or to points in Kansas, Colorado, and southern Missouri to or from Wichita, Kansas City, St. Joseph and St. Louis. Thereafter, Examiner Eshelman prepared a proposed report (Exhibit SS) wherein he recommended that the Commission should find justified a somewhat lower basis or bases of rates for observance between points in that portion of the territory in question than the scales of rates previously fixed as reasonable maxima in the remainder of said territory and which became effective on May 20, 1925. Said proposed report of Examiner Eshelman was served upon the parties in November, 1925, and although they had not previously questioned or objected to the propriety of the prescribed rates which had been made effective on May 20, 1925, or of the rates which were thereafter established between points in [fol. 134] Texas differential territory and New Mexico and the aforesaid market points, the complainants in Nos. 12358, 13619 and 13627 filed exceptions to said proposed report claiming that because of alleged improved conditions in Texas differential territory the differentials authorized in Investigation and Suspension Docket No. 2389 were no longer justified, that the transportation and economic conditions in Texas were substantially similar to those obtaining in Kansas and between Kansas and southern Missouri, and that the same scale of rates should apply from Texas points to the Missouri River markets and to St. Louis and East St. Louis as applied from Kansas points to such markets, and that the rate of progression of the horse and mule rate scales prescribed in No. 12358 was too rapid and should be revised (Exhibit SS). Exceptions to said proposed report were likewise filed by the Chamber of Commerce of Kansas City, as well as by the

defendant carriers operating between points in Colorado, Kansas, and southern Missouri (idem.). No report or order was entered by the Commission giving effect to the recommendations made by Examiner Eshelman.

10. On pages 486-87 of its initial report in No. 12358 (Exhibit QQ), the Commission states that the Kansas City-St. Louis rate is not necessarily the measure of a normal rate for that distance in the Southwest because of the general differences in density of traffic and population and in rate adjustments, adding that similar considerations might also dictate a slightly higher rate than 48.5 cents in the Southwest for the distance from Kansas City to Chicago, and on sheet 13 of the Eshelman proposed report it is declared that the record establishes that the rates in Kansas and southern Missouri might properly be somewhat less than those which would result from the application of the southwestern scale (prescribed in No. 12358), and that the portion of Missouri north of the main line of the Rock Island between Kansas and St. Louis should properly take the same basis of rates as northern Missouri, the latter section being a part of a territory of higher traffic density including Iowa and northern Illinois. Thereafter, on page 432 of its report on further hearing in No. 12358 (Exhibit VV, 195 I. C. C. 417) which contained the findings upon which the Commission predi- [fol. 135] cated its assailed order of December 11, 1933, the Commission further said that the subnormal character of the intrastate rates on horses and mules in Kansas, Missouri, and Nebraska is apparent.

11. In its Docket No. 12268, entitled Board of Railroad Commissioners of the State of South Dakota v. Chicago & North Western Railway Company et al., the carload rates and minimum weights on ordinary livestock, including horses and mules, between points in South Dakota and points in Minnesota, Wisconsin, Illinois, Iowa, Missouri, and Nebraska, particularly the markets of Sioux City, Omaha, Chicago and St. Paul, were alleged to be unreasonable and unduly prejudicial to South Dakota livestock raisers and unduly preferential of livestock raisers in North Dakota, Nebraska, Iowa, and Minnesota. Following a hearing and the taking of testimony on a common record with its Docket No. 12146 entitled National Live Stock Shippers League et al. v. Atchison, Topeka and Santa Fe Railway Company, et al.,

said Commission on February 13, 1923, rendered a separate report in No. 12268 (Exhibit AD), wherein it was held in part that the rates on horses and mules should be 115 per cent of the rates therein prescribed on cattle for like hauls. The rates so prescribed were in due course published and made effective by the carriers defendant in that proceeding, and no complaint was subsequently made by either complaintant or defendants with respect to the rates on horses and mules so made effective pursuant to the findings of the Commission in that proceeding. None of the rates involved in No. 12268 applied to or from points in the Southwest.

12. In a proceeding instituted by said Commission on its own motion as its Docket No. 13273, entitled Nebraska Livestock Case, an investigation was undertaken to determine whether the proper relationship existed between the interstate and intrastate carload rates on ordinary livestock, including horses and mules, from all Nebraska points to Omaha and south Omaha and the interstate rates from the same points of origin to St. Joseph, Kansas City, and Sioux City, with a view to the removal of any undue preference or prejudice or unjust discrimination that might be found to [fol. 136] exist. In its opinion rendered in that proceeding on April 25, 1924 (Exhbiit AE, 89 I. C. C. 444), the Commission in part made the finding that rates on horses and mules should be made 115 per cent of the rates therein prescribed on cattle for like hauls, but with the qualification that such prescribed rates were not suggested as reasonable maxima. The rates so prescribed were in due course published and made effective by the carriers respondent in that proceeding, and no complaint was subsequently made with respect to the rates on horses and mules so made effective pursuant to the findings of the Commission in that proceeding. None of the rates involved in No. 13273 applied to or from points in the Southwest.

13. By order dated January 4, 1926, upon consideration of the record therein and of the Eshelman proposed report and the exceptions filed thereto, the Commission reopened for further hearing No. 12358 and the other southwestern cases that had previously been consolidated therewith, although no petition seeking such reopening had been filed with it and no complaint aside from the claims made in the exceptions to the Eshelman proposed report had been lodged against

the rates prescribed in the prior reports in those cases. Similarly, also in the absence of petition and without complaint from anyone concerning the lawfulness of the rates on horses and mules therein prescribed, the Commission on the same date entered a further order in No. 12268 and No. 13273, the South Dakota and Nebraska cases, whereby they also were reopened for further hearing, but only with respect to the rates on horses and mules. Thereafter, by order dated February 6, 1928, the scope of the further hearing to be held in pursuance of the orders of January 4, 1926, was restricted to a consideration of the rates for the future.

14. Following the taking of additional testimony in October, 1928, at the hearings held in the consolidated cases, including No. 12268 and No. 13273, a proposed report on further hearing (Exhibit VV) was prepared by Examiner R. S. Simons of the Commission's staff, which proposed report was served upon the parties in November, 1929. Exceptions thereto were thereupon filed by the parties, and the case was submitted to the Commission on oral argument on February 17, 1930. By order dated February 1, 1932, no decision therein having been handed down in the meanwhile, the [fol. 137] Commission on its own motion reopened said consolidated proceedings for still further hearing for the purpose of supplementing the record already made, which further hearing was held in May, 1932.

15. Thereafter, but not until July 24, 1933, said Commission rendered its report on further hearing in said consolidated proceedings (Exhibit VV), entitled Western Horse and Mule Rates, 195 I. C. C. 417, which report was served upon the parties on August 5, 1933. In its said report on further hearing the Commission made a finding among other things that for the future the maximum reasonable rates for the transportation of horses, mules, burros and asses between points in the territory within the scope of the proceedings would be 115 per cent of the rates on fat cattle from and to the same points that had been prescribed in a proceeding entitled Livestock-Western District Rates, 176 I. C. C. 1, decided June 8, 1931. No order directly requiring the defendant carriers to establish rates in conformity with such revised findings was entered and served along with said report on further hearing of July 24, 1933, but the carriers were advised by the Commission in its said report that they would

be expected to establish such rates within ninety days after the service thereof, failing in which it was stated that the Commission would consider the entry of appropriate orders. Without establishing rates in conformity with such revised findings of the Commission, the carriers defendant in the consolidated cases (other than No. 12268 and No. 13273) prepared a petition for reconsideration and modification of the Commission's findings and conclusions in its report on further hearing of July 24, 1933; and for further hearing, which petition was dated November 6, 1933, and filed with the Commission November 8, 1933. On December 11, 1933, the Commission entered an order denying said petition and on the same date entered a further order directing and requiring the defendant carriers (petitioners herein), to the extent it was authorized under the issues raised by the respective consolidated cases, to publish and maintain carload rates for the interstate transportation of horses and mules, effective on or before March 8, 1934, which should not exceed those prescribed in said report on further hearing of July 24, 1933. By subsequent orders, the effective date of said order of December 11, 1933, was postponed until August 1, 1934.

[fol. 138] 16. At the hearings the Commission was informed through the testimony of the witnesses, and it was likewise advised in the proposed reports of Examiners Eshelman and Simons, that fourth-section relief would be necessary to make operative any scale of rates that might be prescribed in said consolidated proceedings, but such advices were ignored by the Commission, and on page 449 of its said report on further hearing the carriers were informed that they might file applications for such relief as they may require in connection with the rates therein prescribed, and by its Fourth Section Application No. 11340 dated July 24, 1933, and served August 5, 1933, the Commission undertook to vacate and set aside, effective February 5, 1934, Fourth Section Orders Nos. 9059 and 9183 which had been entered by it contemporaneously with its earlier orders establishing rates on horses and mules between the southwestern points involved in No. 12358 and the cases consolidated therewith prior to January 4, 1926. The effective date of said Fourth Section Order No. 11340, but not until after the filing of the petition for reconsideration and

further hearing of November 8, 1933, was postponed from time to time until August 1, 1934.

17. In the report of the Commission in Livestock-Western District Rates, 176 I. C. C. 1, wherein a uniform level of rates on fat cattle and other edible livestock was prescribed to apply throughout that portion of the western district lying between the Rocky Mountains and the Mississippi River, numerous reasons were advanced to justify the conclusion therein expressed that a uniform level of rates should prevail on such traffic throughout that entire section of the country, contrary to the general practice with respect to the class rates and to the commodity rates on traffic in general. Among other things, it was stated therein, first, that greater occasion for uniformity in rates and regulations exists in the case of a commodity which, like edible livestock, is shipped in considerable volume from every part of a vast territory than in the case of commodities the movement of which is largely localized (page 11); second, that livestock is more frequently offered at a single station in trainloads in plains territory (included in which is Texas differential territory and New Mexico) than in valley terri- [fol. 139] tory (pages 66-67); and, third, that the trend of movement of livestock is toward a focal point in the East where all livestock or its product tends to concentrate and thereby make every shipper an actual or potential competitor of every other shipper to a greater extent probably than is true of any other widely produced commodity. At the beginning of its said report (page 7) the Commission stated that the investigation to which same related was with regard to the rates and regulations on edible livestock, in carloads, throughout that portion of the country lying west of Chicago and the Mississippi River, known as the western district, and by the terms of the order by which such proceeding was inaugurated (Exhibit AG) any consideration of the rates on horses and mules was expressly excluded therefrom.

18. In its report on further hearing in Western Horse and Mule Rates (Exhibit VV) the Commission stated on page 446 that the only substantial transportation disadvantages of horses and mules as compared with other forms of ordinary livestock are a higher percentage of claims for

loss and damage and a higher per car valuation, but on page 423 of its said report there appears the positive finding that the volume of movement of horses and mules is not more than 3 to 4 per cent of that of edible livestock. And on the same page the finding is made that from the Southwest the flow of horse and mule traffic is mainly to the Southeast, whereas from the western trunk-line states, including South Dakota, Nebraska, and Kansas, the traffic moves either to or through the Missouri River markets, besides which it is there declared that the movement from South Dakota is almost entirely to the East, there being no movement of any consequence to the Southeast. There furthermore is unrefuted evidence of record that horses and mules do not move in trainload lots in the Southwest.

In its report in Livestock-Western District Rates, the Commission said (pages 43-44) that in its view livestock, speaking only of edible livestock, is not a class of traffic upon which a rate level should be maintained which will [fol. 140] compensate for loss or lack of adequate or average earnings on passenger traffic or any other class of traffic, and thereinafter (page 83) it is declared that livestock (edible) is a commodity which from its nature can not be expected to do more than pay its own way; that is, it can not sustain a rate level which will product more than the cost of rendering the service plus a minumum profit, the extent of that profit being generally determined by the well known rule of what the traffic will bear. The Commission thereupon adds that, judged even by such standards, livestock (edible) in portions of the western district is not at present bearing its fair share of the transportation burden, and that under the rate levels therein found reasonable it will do no more than meet those minimum requirements, there being indeed room for doubt whether some of the prescribed rates would produce more than a small margin above the actual cost of transportation. There is no finding of the Commission in its report on further hearing in Western Horse and Mule Rates (Exhibit VV) to the effect that the horse and mule traffic is not moving freely throughout the Southwest and from the Southwest to other territories on the rates presently prevailing, or that such current rates are in any sense more than the traffic will bear, or that the rates prescribed in its said report on further hearing will in any respect stimulate or increase the volume of movement of

the horse and mule traffic, nor would the evidence of record support such findings.

19. The Commission avowedly based its decision to prescribe a uniform scale of rates on horses and mules to apply in both western trunk-line and southwestern territories (and in doing so to reduce the rates previously prescribed to apply on that traffic in the Southwest) and also to make the rates on horses and mules in the Southwest not more than 15 per cent in excess of the prescribed rates on fat cattle, upon its prior findings and conclusions in Livestock-Western District Rates, but there is no finding that the controlling circumstances and conditions pointed out by the Commission as being responsible for the rates prescribed by it to apply on fat cattle and other edible livestock in the western district have any application to the horse and mule traffic, even though there does exist a limited similarity or identity of the transportation conditions incident to the handling of the two classes of livestock, and the evidence of record affirmatively discloses that the horse and [fol. 141] mule traffic is not subject to the circumstances and conditions relied upon by the Commission in justification of the rates prescribed by it to apply on shipments of fat cattle and other edible livestock in the western district.

20. The finding of the Commission on page 446 of its report (Exhibit VV) that the cities which are the primary markets for cattle, sheep, and hogs are also the primary markets for horses and mules is in conflict, particularly so far as the Southwest is concerned, with its contrary findings on pages 423 and 436 of the same report that the flow of the horse and mule traffic from the Southwest is mainly to the Southeast, whereas from the western trunk-line states the traffic moves either to or through the Missouri markets and thence to Chicago and Galesburg, Ill., and cities in central territory, and particularly that the movement from South Dakota is almost entirely to points in the East and not to the Southwest or the Southeast.

21. On page 446 of its report (Exhibit VV) the Commission says it is true that a low level of rates on cattle is necesssary to move those animals to the primary markets and that competitive conditions have affected those rates, but there is no finding made by the Commission that the horse and mule traffic has been or is subject to the same or

like competitive conditions by which cattle and other edible livestock are affected. The further finding made by the Commission that the competitive conditions which affect the rates on cattle consigned to the primary markets likewise must be considered in prescribing rates on horses and mules is not tantamount to a finding that the two classes of livestock are affected by the same or like competitive conditions, and there is no substantial evidence of record to support such a finding.

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22. On page 424 of its report (Exhibit VV) the Commission makes the finding that the use of horse and mule power on farms has decreased rapidly and steadily as there has been a growth of the use of trucks and tractors. Evidence presented by plaintiffs and before the court for consideration (Exhibits (AH and AI), being official reports of the United States Bureau of the Census and of the United States Department of Agriculture, affirmatively [fol. 142] discloses that since the last hearing was held by the Commission in May, 1932, and particularly since the beginning of the year 1933, a phenomenal reversal of the trend has taken place as to that feature, and that there has now definitely been established an increase in the use of horses and mules on the farms. This changed condition was brought to the attention of the Commission by plaintiffs herein by their petition dated November 6, 1933.

23. Evidence presented by plaintiffs and before the court for consideration (Exhibits AH, AI, AJ, AK, and AQ) disclose that since the close of the last hearing held by the Commission in these proceedings, and commencing about the first of the year 1933, brought to the notice of the Commission by the petition of November 6, 1933, there has occurred a sharp and phenomenal upward turn in the value of horses and mules, though not generally noticeable until later in the year. The findings of the Commission on page 425 of its report (Exhibit VV) as to the price declines of horses and mules up to the time its last hearing was held are not reflective of the present price trends of horses and mules, and the rates for the future prescribed by the Commission to apply on horses and mules, being presumptively based in part upon the

evidence before the Commission as to values, are not reflective of the present and future value of the horse and mule traffic to which the prescribed rates would have application.

24. On page 435 of its report on further hearing (Exhibit VV), the Commission makes the finding that at present there are unwarranted disparities between the rates from border points in Kansas and Oklahoma to Kansas City, the rates from the border points in Kansas being substantially lower than those from nearby border points in Oklahoma, but the evidence discloses that the interstate rates from Kansas to Kansas City, Mo., are influenced and controlled by the Kansas intrastate rates applying to Kansas City, Kans., which intrastate rates were declared by the Commission on page 432 of its same report to be subnormal and therefore not maximum reasonable rates.

25. The evidence discloses that the rate disadvantages to which the Commission finds on pages 430-31 of its report (Exhibit VV) the Fort Worth market is subjected in comparison with the Kansas City market are likewise attribut- [fol. 143] able to the influence of the subnormal intrastate rates in Kansas. The rate advantages there found by the Commission to accrue to other western trunk-line markets named by the Commission, including St. Louis, are attributable to the subnormal character of the rates on horses and mules in western trunk-line territory, as the Commission has found on page 447 of its report in question that rates on horses and mules made 115 per cent of the prescribed fat cattle rates will bring about increases in the rates from, to, and between points in the western trunk-line states. There is additionally evidence of record which indicates that the Fort Worth market has been and is relatively more prosperous than the Kansas City market and other horse and mule markets in western trunk-line terrritory, supported by a finding to that effect in the Eshelman proposed report, and that the Fort Worth market has not in fact been injured by the imputed rate disadvantages cited by the Commission, nor has it made any finding that the Fort Worth market has actually suffered any damage in consequence of such imputed rate disadvantages.

26. The finding of the Commission on pages 424 and 425 of its report (Exhibit VV) that only the better grades

of horses and mules find their way to the stock markets not only is without support in but is directly contradicted by the evidence of record in the proceeding before it.

27. On pages 445-46 of its report (Exhibit VV) the Commission made the finding that various unusual expenses, many of which are there enumerated, are incurred in the transportation of livestock, including horses and mules. Plaintiffs herein presented before said Commission numerous comparisons of rates that had been prescribed by it on commodities other than livestock, which rates and the earnings derived therefrom are substantially higher and more remunerative than either the present rates on horses and mules in the Southwest (those previously prescribed by the Commission) or those fixed as reasonable maxima for the future in its said report, although the handling of such commodities (with the possible exception of live poultry) does not require the unusual expenses referred to by the Commission as being incident to the handling of livestock, but on pages 440-41 of its report the Commission declined to give consideration to such rate comparisons as a proper test of the reasonableness of the much lower rates and earnings on horses and mules.

[fol. 144] 28. The statement of the Commission on page 440 of its report (Exhibit VV) that the rate comparisons presented by defendants to show that the rates on horses and mules in the Southwest and in western trunk-line territory are unreasonably low are with commodities that have few transportation characteristics in common with horses and mules is particularly incorrect so far as the compared rates on live poultry are concerned, inasmuch as there is but little difference between the transportation characteristics incident to the handling of that commodity and those incident to the transportation of livestock, including horses and mules. The rates on horses and mules in the Southwest and the earnings derived therefrom are not greatly in excess of or are less than half the prescribed rates and the earnings that accrue on shipments of live poultry in southwestern territory, and the Commission has made no finding that either the transportation or the economic conditions affecting the horse and mule traffic are such as to necessitate such a "spread" between the rates thereon and those prescribed to apply

on live poultry in the same territory, nor is there any evidence of record to support such a finding.

29. The statement of the Commission on page 446 of its report (Exhibit VV) that it is illogical to prescribe rates on the horse and mule traffic unrelated to the rates on cattle is in direct conflict with its action in prescribing rates on horses and mules in other rate territories, both before and after the rendition of its report herein of July 24, 1933, that are wholly unrelated to the prescribed rates on cattle therein, and it is no more illogical to prescribe such unrelated rates in the Southwest (as was in fact done in the 1924 and 1925 decisions) than it is to do so elsewhere.

30. The Commission's report of July 24, 1933 (Exhibit VV), and its subsequent order of December 11, 1933 (Exhibit XX), if permitted to become effective, will require the plaintiffs to discontinue the maintenance of the differentials or arbitraries authorized by the Commission's report and order in Investigation and Suspension Docket No. 2389 of July 30, 1925, and will compel plaintiffs to establish and maintain in Texas differential territory the same reduced carload rates on horses and mules that are now ordered to be applied in Texas common-point territory and elsewhere in the Southwest. Such findings and requirement are made in the absence of any finding by the [fol. 145] Commission that since 1925 there has been a relatively greater improvement in transportation conditions in Texas differential territory and New Mexico in contrast with the transportation conditions obtaining in Texas common-point territory and the remainder of the Southwest, or that the transportation conditions are as favorable in the one section as in the other, nor does the evidence of record before the Commission warrant such a finding. Furthermore, since the Commission rendered its said report of July 24, 1933, it has handed down a supplemental report in another proceeding involving the class rates and a large number of the commodity rates in the southwestern territory, in which supplemental report, upon consideration of a large and comprehensive record, it held and declared that the transportation conditions now prevailing in Texas differential territory continue to be more onerous than in other portions of the Southwest and call

for and justify the maintenance of higher rates in said differential territory than the basic rates found reasonable and proper for observance otherwise in the Southwest.

31. The evidence before the Commission, including the supplemental evidence before the court relating to the period since the close of the last hearing before the Commission, discloses that at no time since the enactment of the Transportation Act, 1920, have the carriers in the so-called southwestern region, and particularly the plaintiffs herein, earned the return upon their investment to which they are entitled under the terms of that statute, and that from 1929 to and including 1933 there was a progressive decline in their net railway operating income. In both 1932 and 1933 (Exhibit AN) the carriers grouped by the Commission for accounting purposes in the southwestern region (most of the plaintiffs herein) failed to earn any net income, taken as a whole, but on the contrary sustained a deficit in 1932 of $30,976,333.00 and in 1933 of $32,000,270.00, despite the fact that there was a greater number of tons and of ton-miles (tons carried one mile) carried by the lines in the southwestern region in 1933 than in 1932, although the evidence further discloses that in 1933 the earnings of the carriers in the United States as a whole showed some improvement over the earnings for 1932.

[fol. 146] 32. In a report rendered by the Commission in its Docket No. 26000 on July 31, 1933, entitled General Rate Level Investigation, 195 I. C. C. 5, the Commission declared in substance that, because of the weakened financial condition of the carriers and of the necessity in the public interest of maintaining an adequate transportation system, the reductions that have occurred in the general commodity price level since 1929 do not warrant a general rate reduction, and that whether a reduction should be made of the rates on particular commodities is dependent upon the conditions specially pertaining thereto, but in the proceedings herein under review the Commission has pointed to no special conditions, whether transportation or economic, as it did in Livestock-Western District Rates, in support of the reduction of the horse and mule rates ordered by it in the Southwest, and there was no evidence before the Commission which would support

such a finding. The Commission further in substance held in the Docket No. 26000 proceeding that the evidence before it failed to support a finding that the carriers are not being operated under honest, economical, and efficient management, nor is there a finding to the contrary in the Commission's report herein under review (Exhibit VV).

33. The rates prescribed by the Commission in its report on further hearing (Exhibit VV) to apply on carload shipments of horses and mules between points in the Southwest as reasonable maxima are substantially lower than the rates which had been approved or prescribed by the Commission as reasonable maxima in central freight association territory (roughly speaking, the states of Illinois, Indiana and Ohio) and in the Southeast, although there is no finding nor evidence that the transportation conditions relating to the carriage by rail of horses and mules are more favorable in the Southwest than they are in either central freight association territory or the Southeast.

[fol. 147] CONCLUSIONS OF LAW

1. It is patent from the expressions and findings made by the Commission in its report rendered in Livestock-Western District Rates on June 8, 1931, 176 I. C. C. 1, as well as from its report on further hearing in that proceeding of January 10, 1933, 190 I. C. C. 611, that the rates on fat cattle and other edible livestock therein declared to be reasonable maxima were based primarily upon the economic distress of the edible livestock industry and with the least possible regard to the transportation conditions incident to the handling of that traffic. There is no finding by the Commission, nor was there any evidence before it to support such a finding, that the production and marketing of horses and mules in the Southwest is or has been subject to the same or to like economic conditions as those affecting the edible livestock industry, besides which there is an affirmative finding by the Commission that the volume of movement of horses and mules in the Southwest is only 3 to 4 per cent of that of edible livestock, together with affirmative evidence that horses and mules are not shipped in trainload lots as is often the case with edible livestock. Because the economic and trans-

portation conditions by which the Commission declared the rates prescribed to apply as reasonable maxima on fat cattle and other edible livestock were principally controlled are non-existent in the case of the horse and mule traffic, and because the Commission made no pretense in its report (Exhibit VV) that such differences in economic and transportation conditions were taken into account in fixing the assailed rates on horses and mules, its finding that the rates on horses and mules in the Southwest should not exceed by more than 15 per cent the rates prescribed by it to apply on fat cattle in that territory, and also the subsequent order based upon that finding, are not supported by substantial evidence and hence are arbitrary, illegal, and void.

2. In undertaking to prohibit the defendant carriers (plaintiffs herein) from maintaining and applying carload rates on horses and mules in the Southwest which exceeds by more than 15 per cent the rates theretofore prescribed on fat cattle in that territory in a wholly different proceeding, and upon a radically different showing of economic and transportation conditions affecting the traffic, the Interstate Commerce Commission has unlawfully based its assailed orders upon evidence not legally before it in the cases wherein such orders were entered, and they are [fol. 148] therefore arbitrary, illegal, and void.

3. In basing its order prohibiting the defendant carriers (plaintiffs herein) from maintaining and applying carload rates on horses and mules in the Southwest more than 15 per cent in excess of the rates theretofore prescribed to apply in that territory on fat cattle merely upon a finding that the only substantial transportation disadvantages of horses and mules as compared with other forms of ordinary livestock are a higher percentage of claims for loss and damage and a higher per car valuation when it affirmatively appears that the prescribed rates on fat cattle were made with the least possible regard for or consideration of transportation conditions, but were based primarily upon the economic distress of the industry and upon the great volume of movement of the cattle traffic in the western district, including the fact that to a considerable extent the shipments are made in trainload lots, none of which circumstances has application to

the transportation of horses and mules, the Commission exceeded its authority and the orders so entered by it are arbitrary, illegal, and void.

4. The fact that in the South Dakota and Nebraska cases the Commission had previously prescribed rates on horses and mules no more than 15 per cent in excess of those on fat cattle affords no lawful predicate for a similar requirement concerning the rates on those commodities in the Southwest in view of the affirmative evidence and finding that there is no definite relation between the rates in the Southwest and those involved in the South Dakota and Nebraska cases and that there is little or no active competition in the markets as to horses shipped between points in the Southwest and those shipped between points in the territory involved in the South Dakota and Nebraska cases.

5. The Commission exceeded its lawful authority and abdicated its statutory duty in condemning the reasonableness of the existing carload rates on horses and mules in the Southwest because of rate disadvantages and inequalities brought about by the existence of lower intrastate carload rates on that commodity in Kansas, which intrastate rates and those prevailing in the adjoining States of Nebraska and Missouri were declared by the Commission to be subnormal, as well as by the existence of lower interstate carload rates on such traffic in that section, especially in view of its further finding that the effect of its [fol. 149] assailed order will be to bring about increases in the rates from, to, and between points in the western trunk-line states.

6. The assailed orders of the Commission are illegal and invalid because they are based in part upon the unwarranted finding that only the better grades of horses and mules find their way to the stock markets, which finding is contradicted by affirmative evidence of record and is without support otherwise.

7. The assailed orders of the Commission are invalid and illegal because they result in part from the unlawful refusal of the Commission to perform its statutory function and duty to give consideration to the relevant rate comparisons presented by the carriers to justify the reason-

ableness of their assailed rates on horses and mules. The criticism made by the Commission of such rate comparisons goes only to the weight of the evidence so presented, and it is its statutory function and duty to consider and analyze the value and relevancy of such rates as compared with those on horses and mules, and its action in rejecting same was unlawful, especially as the carriers perform more expensive service in the transportation of horses and mules than in handling traffic which yields them the greater revenue, distance considered.

8. The Commission unlawfully and arbitrarily refused to consider the rates on live poultry prescribed by it which were exhibited and relied upon by the carriers to justify the assailed rates on horses and mules, there being but scant difference between the transportation conditions incident to the two commodities.

9. Without any evidence or finding of the existence of a substantial similarity of transportation conditions in the Southwest and in western trunk-line territory, and without pointing to any special conditions to justify the same level of rates on horses and mules in the two rate groups as it sought to do with respect to edible livestock in livestock-Western District Rates, the action of the Commission in denying the southwestern carriers (plaintiffs herein) the right to maintain a higher level of rates on horses and [fol. 150] mules than those fixed as reasonable and proper in the normally lower rated western trunk-line territory was arbitrary and illegal, and the Commission exceeded its lawful authority in ordering plaintiffs herein to reduce their carload rates on horses and mules to the level of those concurrently prescribed as just and reasonable in western trunk-line territory.

10. There being no evidence or finding that since 1925 there has been a relatively greater improvement in transportation conditions in Texas differential territory and in New Mexico than in Texas common-point territory and the remainder of the Southwest, or that the transportation conditions are now as favorable in one section as in the other, and the evidence of record affirmatively establishing that the contrary is true, the action of the Commission in ordering that the differentials previously author-

ized by it in 1925 in its Investigation and Suspension Docket No. 2389 be discontinued and abolished is arbitrary, unreasonable, and void.

11. The action of the Commission in denying the petition of the southwestern carriers for reconsideration and further hearing dated November 6, 1933, and in refusing to reopen the complaints to receive evidence showing that a portentous reversal of economic conditions with respect to horses and mules, including a phenomenal upturn in the value and demand therefor, had occurred during that year was arbitrary and unreasonable.

12. The action of the Commission in denying said petition for reconsideration and further hearing, and in refusing to afford the southwestern carriers an opportunity to prove that during the year 1933 the earnings and financial condition of the carriers in practically all other portions of the United States had shown a greater improvement than in the Southwest, was arbitrary and illegal.

13. The history of the proceedings before the Commission in the involved cases relating to the rates on horses and mules discloses a fixed determination and set purpose on its part from the date of its order reopening such proceedings for further hearing and consideration of January 4, 1926, to prohibit the southwestern carriers from [fol. 151] maintaining carload rates on horses and mules more than 15 per cent in excess of the corresponding carload rates on beef cattle without regard to the facts, and solely to facilitate that purpose the Commission at the same time arbitrarily reopened without complaint the South Dakota and Nebraska cases, in which such 115 per cent relationship of the rates on horses and mules had been prescribed, whereas it had been previously rejected as to the rates in the Southwest, and thereafter otherwise charted a course having that specific end in view, arbitrarily disregarding, ignoring, and refusing to consider all evidence not in consonance therewith.

14. The action of the Commission in vacating by its Fourth Section Order No. 11340 of July 24, 1933, the fourth-section relief theretofore granted by its Fourth Section Orders Nos. 9059 and 9183 was arbitrary and void, and the sole purpose thereof was to coerce the southwest-

ern carriers (plaintiffs herein) into reducing generally their carload rates on horses and mules throughout the Southwest, it not having been within the power of the Commission under the scope of the issues before it in the various cases under review to compel such general reduction by means of an appropriate rate order entered pursuant to the authority otherwise conferred upon it.

15. Having taken over the function of prescribing maximum reasonable carload rates on horses and mules in the Southwest, the statutory obligation and duty rested upon the Commission to see that the rates so prescribed by it did not contravene the provisions of any section of the statute, including those of the fourth section. Evidence of record before the court discloses that without appropriate fourth-section relief it will be impossible for the plaintiffs herein to apply the rates prescribed by the Commission in its order of December 11, 1933 (Exhibit XX), without creating preferences and prejudices prohibited by section 3 and without compelling the carriers in many instances to publish lower rates than the rates thereby authorized as reasonable maxima and so depriving them of their long hauls and of the full measure of the earnings which they are entitled to receive under the provisions of sections 15 and 15a.

[fol. 152] 16. The order entered by the Commission on February 3, 1934, whereby it purports to grant fourth-section relief "until the effective date of the order to be entered pursuant to a report in Fourth Section Applications Nos. 15445 (amended) and 15473," does not fulfill the duty imposed upon it by the statute, as the carriers still rest under the onerous burden and obligation in conformity with the Rules of the Commission (Exhibit ZZ) of justifying permanent fourth-section relief in respect of the rates so prescribed.

Respectfully submitted,

J. H. Tallichet, Robert Wilkins Thompson, Solicitors for Petitioners. Hackney & Welch, of Counsel.

[File endorsement omitted.]

[fol. 153] IN UNITED STATES DISTRICT COURT

ORDER DENYING FINDINGS OF FACT AND CONCLUSIONS OF LAW REQUESTED BY PETITIONERS—Filed July 10, 1934

Counsel for petitioners having submitted findings of fact and conclusions of law which they have requested the court to make in lieu of the findings of fact and conclusions of law heretofore made and announced coincident with and subjoined to its per curiam opinion filed in the above-entitled cause on June 7, 1934, the court, having considered the same and being fully advised, denies the findings of fact and conclusions of law so requested, to which ruling of the court the petitioners except.

Dated this 10th day of July, 1934.

—— ——, United States Circuit Judge. Albert L. Reeves, United States District Judge. Merrill E. Otis, United States District Judge.

[File endorsement omitted.]

[fol. 154] IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL BY TEXAS AND NEW ORLEANS RAILROAD COMPANY ET AL.—Filed July 10, 1934

To the Honorable Arba S. Van Valkenburgh, United States Circuit Judge, the Honorable Albert L. Reeves and the Honorable Merrill E. Otis, United States District Judges:

Come now Texas and New Orleans Railroad Company; The Texas and Pacific Railway Company; Abilene & Southern Railway Company; The Denison and Pacific Suburban Railway Company; The Pecos Valley Southern Railway Company; The Weatherford, Mineral Wells & Northwestern Railway Company; Frank O. Lowden, James E. Gorman, and Joseph B. Fleming, Trustees, The Chicago Rock Island and Pacific Railway Company and the Chicago, Rock Island and Gulf Railway Company, Debtors; L. W. Baldwin and Guy A. Thompson, Trustees, Missouri Pacific Railroad Company, New Orleans, Texas & Mexico Railway Company, The Beaumont, Sour Lake & Western Railway

Company, The St. Louis, Brownsville and Mexico Railway Company, and International-Great Northern Railroad Company, Debtors; J. M. Kurn and John G. Lonsdale, Trustees, St. Louis-San Francisco Railway Company, Debtor; St. Louis, San Francisco and Texas Railway Company; Fort Worth & Rio Grande Railway Company; Missouri-Kansas-Texas Railroad Company; Missouri-Kansas-Texas Railroad [fol. 155] Company of Texas, St. Louis Southwestern Railway Company; St. Louis Southwestern Railway Company of Texas; Fort Worth and Denver City Railway Company; The Wichita Valley Railway Company; Burlington-Rock Island Railroad Company; The Colorado and Southern Railway Company; The Atchison, Topeka and Santa Fe Railway Company; Gulf, Colorado and Santa Fe Railway Company; Panhandle and Santa Fe Railway Company; Roscoe, Snyder and Pacific Railway Company; Kansas, Oklahoma & Gulf Railway Company; Midland Valley Railroad Company; Fort Smith and Western Railway Company, L. B Barry, Jr., Receiver; The Kansas City Southern Railway Company; Texarkana and Fort Smith Railway Company; Louisiana & Arkansas Railway Company; Louisiana, Arkansas & Texas Railway Company; Illinois Central Railroad Company; and The Yazoo and Mississippi Valley Railroad Company, petitioners in the cause, styled, numbered, and pending as above, and feeling aggrieved by the final decree entered in this cause on the 7th day of June, 1934, by the statutory three-judge court convened pursuant to Section 47 of Title 28 of the Code of Laws of the United States, do hereby appeal from said decree to the Supreme Court of the United States for the reasons set forth in the Assignment of Errors filed herewith.

And your petitioners pray that their appeal be allowed, that citation be issued as provided by law, that a transcript of the record, proceedings and papers on which said final decree was made and entered, duly authenticated, may be transmitted forthwith to the Supreme Court of the United States, and that the proper order relating to the security to be required of them be made.

J. H. Tallichet, Robert Wilkins Thompson, Solicitors for Petitioners. Hackney & Welch, of Counsel.

[File endorsement omitted.]

[fol. 156] IN UNITED STATES DISTRICT COURT

ASSIGNMENT OF ERRORS—Filed July 10, 1934.

Come Now Texas & New Orleans Railroad Company; The Texas and Pacific Railway Company; Abilene & Southern Railway Company; The Denison and Pacific Suburban Railway Company; The Pecos Valley Southern Railway Company; The Weatherford, Mineral Wells & Northwestern Railway Company; Frank O. Lowden, James E. Gorman, and Joseph B. Fleming, Trustees, The Chicago, Rock Island and Pacific Railway Company and the Chicago, Rock Island and Gulf Railway Company, Debtors; L. W. Baldwin and Guy A. Thompson, Trustees, Missouri Pacific Railroad Company, New Orleans, Texas & Mexico Railway Company, The Beaumont, Sour Lake & Western Railway Company, The St. Louis, Brownsville and Mexico Railway Company, and International-Great Northern Railroad Company, Debtors; J. M. Kurn and John G. Lonsdale, Trustees, St. Louis-San Francisco Railway Company, Debtor; St. Louis, San Francisco and Texas Railway Company; Fort Worth & Rio Grande Valley Railway Company; Missouri-Kansas-Texas Railroad Company; Missouri-Kansas-Texas Railroad Company of Texas; St. Louis Southwestern Railway Company; St. Louis Southwestern Railway Company of Texas; Fort Worth and Denver City Railway Company; The Wichita Valley Railway Company; Burlington-Rock [fol. 157] Island Railroad Company; The Colorado and Southern Railway Company; The Atchison, Topeka and Santa Fe Railway Company; Gulf, Colorado and Santa Fe Railway Company; Panhandle and Santa Fe Railway Company; Roscoe, Snyder and Pacific Railway Company; Kansas, Oklahoma & Gulf Railway Company; Midland Valley Railroad Company; Fort Smith and Western Railway Company, L. B. Barry, Jr., Receiver; The Kansas City Southern Railway Company; Texarkana and Fort Smith Railway Company; Louisiana & Arkansas Railway Company; Louisiana, Arkansas & Texas Railway Company; Illinois Central Railroad Company; and The Yazoo and Mississippi Valley Railroad Company, petitioners (now appellants) in the cause styled, numbered and pending as above, and file the following Assignment of Errors upon which they will rely upon the prosecution of an appeal

to the Supreme Court of the United States from the decree of the District Court entered and filed on June 7, 1934:

1. The District Court erred in entering its final decree of dismissal on June 7, 1934, and in refusing to grant the relief prayed for by petitioners in their bill of complaint herein and in dismissing said bill of complaint.

2. The District Court erred in failing and refusing to hold that the entry by the Interstate Commerce Commission of its Fourth Section Order No. 11340 entered on July 24, 1933, coevally with the rendition of its report of that date in Western Horse & Mule Rates, I. C. C. Docket No. 12358 and consolidated causes, including Fourth Section Application Nos. 461, 462, 621, 673, and 678, constituted an arbitrary, unreasonable, unlawful, unjust, void and wholly unnecessary exercise, as well as a misuse, of the statutory powers conferred upon said Commission, in that it represented an effort on its part to coerce the defendant carriers (appellants herein) by means of the withdrawal of fourth-section relief into accepting reductions of their rates (previously prescribed) and in yielding compliance with the findings and conclusions set out in its said concomitant report in Western Horse & Mule Rates to a greater extent than [fol. 158] was possible within the issues raised in said consolidated causes under and pursuant to other provisions of the statute.

3. The District Court erred in failing and refusing to hold that the order made and entered by the Interstate Commerce Commission in that certain proceeding then pending before it entitled Western Horse & Mule Rates, I. C. C. Docket No. 12358 and consolidated causes, on the 11th day of December, 1933, was arbitrary, unreasonable, unlawful, unjust, void, and useless, in that such order was made without substantial evidence to support it, that the findings upon which it was based were contrary to and contradicted by the evidence of record, and that in other respects it was an attempted illegal use of its authority and an abuse of the statutory powers conferred upon it.

4. The District Court erred in failing and refusing to hold that the aforesaid orders of said Commission set out in the bill of complaint herein, and sought to be annulled and set aside are unsupported by and contrary to the evidence and are hence invalid.

5. The District Court erred in failing and refusing to hold that the aforesaid orders of said Commission set forth in the bill of complaint herein, and sought to be annulled and set aside, were without substantial evidence to support same and are beyond the powers of the Commission to make.

6. The District Court erred in failing and refusing to hold the aforesaid orders of the Commission void and useless because the Commission had exceeded its statutory powers, because it had arbitrarily and capriciously refused to exercise the powers, functions, and duties conferred and imposed upon it by the statute by refusing and declining to consider relevant evidence of record, and because its action was otherwise manifestly arbitrary and unreasonable and transcended the authority conferred upon it by law, wherefore said orders should be set aside and annulled by the Court.

[fol. 159] 7. The District Court erred in failing and refusing to hold that in making the findings and conclusions expressed in its report in said Western Horse & Mule Rates of July 24, 1933, said Commission did not conform such findings and conclusions to the transportation standard, but on the contrary arbitrarily and capriciously rejected and refused to consider relevant evidence of record before it which, if taken into consideration and accorded the weight to which it was legally entitled, would have conclusively demonstrated and required a finding by said Commission that the presently effective rates on horses and mules within the territory embraced in the several complaints and other causes involved herein (broadly speaking, so-called southwestern territory, including roughly, the States of Arkansas, Louisiana, Oklahoma, and Texas, as well as parts of New Mexico, Colorado, Kansas and Missouri) are not and for the future will not be in excess of reasonable maximum rates, and that in consequence the orders of said Commission based upon findings so wanting in conformity to the transportation standard and herein assailed are arbitrary, unlawful, void, and useless.

8. The District Court erred in failing and refusing petitioners' requested conclusion of law that the rates on fat cattle and other edible livestock prescribed by said Commission in a certain proceeding entitled Livestock—Western

District Rates, which were declared in its reports rendered therein on June 8, 1931, 176 I. C. C. 1, and on January 10, 1933, 190 I. C. C. 611, to be based primarily upon the economic distress of the livestock industry and with the least possible regard to the transportation conditions incident to the handling of that traffic; that in ordering and requiring petitioners to publish and maintain rates on horses and mules in southwestern territory (as described above) which should not exceed by law more than 15 per cent the corresponding rates prescribed in said Livestock-Western District Rates to apply on fat cattle the Commission made no finding, nor was there any evidence before it to support such a finding, that the production and marketing of horses and mules in southwestern territory is or has been subject to the same or like economic conditions as those affecting the edible livestock industry, although an affirmative finding was made by said Commission that the volume of movement of horses and mules in southwestern territory is only [fol. 160] 3 to 4 per cent of that of edible livestock, and in addition there is affirmative evidence of record that horses and mules are not shipped in trainload lots as is often the case with edible livestock, that being one of the reasons prominently assigned by said Commission as justifying the legality of the rates so prescribed by it to apply on fat cattle and other edible livestock; that the economic and transportation conditions by which the Commission declared the rates prescribed to apply as reasonable maxima on fat cattle and other edible livestock were principally controlled are non-existent in the case of the horse and mule traffic, and that the Commission made no pretense in its report in said Western Horse & Mule Rates that the aforesaid differences in economic and transportation conditions were taken into account or considered by it in fixing the prescribed rates on horses and mules herein assailed, and that in consequence said finding of the Commission that the rates on horses and mules in southwestern territory should not exceed by more than 15 per cent the rates prescribed by it to apply on fat cattle in that territory, as likewise its subsequently assailed order based upon that finding, are not supported by substantial evidence and hence are arbitrary, illegal, and void.

9. The District Court erred in failing and refusing to adopt petitioners' requested conclusion of law that, in

undertaking to prohibit petitioners from maintaining and applying carload rates on horses and mules in southwestern territory (as described above) which exceed by more than 15 per cent the rates theretofore prescribed to apply on fat cattle in that territory in a wholly different proceeding, and upon a radically different showing of economic and transportation conditions affecting the traffic, the Interstate Commerce Commission has unlawfully based its assailed orders upon evidence not legally before it in the cases wherein such orders were entered, and that such orders are therefore arbitrary, illegal, and void.

10. The District Court erred in failing and refusing to adopt petitioners' requested conclusion of law that, in basing its order prohibiting petitioners from maintaining and [fol. 161] applying carload rates on horses and mules in southwestern territory more than 15 per cent in excess of the rates theretofore prescribed in another proceeding to apply in that territory on fat cattle merely upon a finding that the only substantial transportation disadvantages of horses and mules as compared with other forms of ordinary livestock are a higher percentage of claims for loss and damage and a higher per car valuation when it affirmatively appears from the findings of the Commission that the rates so prescribed on fat cattle were made with the least possible regard for or consideration of transportation conditions, but were based primarily upon the economic distress of the industry and upon the great volume of movement of the cattle traffic in the western district, including the fact that to a considerable extent the shipments are made in trainload lots, none of which circumstances has application to the transportation of horses and mules, the Commission exceeded its lawful authority, and that the assailed orders so entered by it are arbitrary, illegal and void.

11. The District Court erred in failing and refusing to adopt petitioners' requested conclusion of *that* to the effect that the prescribing by said Commission in the South Dakota and Nebraska cases of rates on horses and mules no more than 15 per cent in excess of those on fat cattle affords no lawful predicate for a similar requirement concerning the rates on those commodities in southwestern territory, in view of the affirmative evidence and finding that there is no definite relation between the rates in southwestern terri-

tory and those involved in the South Dakota and Nebraska cases and that there is little or no active competition in the markets as to horses and mules shipped between points in southwestern territory and those shipped between points in the territory involved in the South Dakota and Nebraska cases.

12. The District Court erred in failing and refusing to adopt petitioners' requested conclusion of law that the Commission exceeded its lawful authority and abdicated its statutory duty in condemning the reasonableness of the existing carload rates on horses and mules in southwestern territory because of rate disadvantages and inequalities brought about by the existence of lower intrastate carload [fol. 162] rates on that commodity in Kansas, which intrastate rates and those prevailing in the adjoining States of Nebraska and Missouri were declared by the Commission to be subnormal, as well as by the existence of lower interstate carload rates on such traffic in that section, especially in view of its further finding that the effect of its assailed order will be to bring about increases in the rates from, to, and between points in the western trunk-line states, including South Dakota, Nebraska and Kansas.

13. The District Court erred in failing and refusing to adopt petitioners' requested conclusion of law that the assailed orders of the Commission are illegal and invalid because they are based in part upon the unwarranted finding that only the better grades of horses and mules find their way to the stock markets, which finding is contradicted by affirmative evidence of record and is without support otherwise.

14. The District Court erred in failing and refusing to adopt petitioners' requested conclusion of law that the assailed orders of the Commission are invalid and illegal because they result in part from the unlawful refusal of the Commission to perform its statutory function and duty to give consideration to relevant rate comparisons presented by the carriers (petitioners herein) to justify the reasonableness of their assailed rates on horses and mules, the action of the Commission in rejecting such evidence being unlawful, especially as the carriers perform more expensive service in the transportation of horses and mules

than in handling the traffic which yields them the greater revenue, distance considered.

15. The District Court erred in failing and refusing to adopt petitioners' requested conclusion of law that the Commission unlawfully and arbitrarily refused to consider the rates on live poultry prescribed by it which were exhibited and relief upon by the carriers (petitioners herein) to justify thet assailed rates on horses and mules, there being but scant difference between the transportation conditions incident to the two commodities.

16. The District Court erred in failing and refusing to adopt petitioners' requested conclusion of law that, without any evidence or finding of the existence of a substantial [fol. 163] similarity of transportation conditions in the Southwest and in western trunk-line territory, and without pointing to any special conditions to justify the same level of rates on horses and mules in the two rate groups as it sought to do with respect to edible livestock in Livestock-Western District Rates, the action of the Commission in denying the southwestern carriers (petitioners herein) the right to maintain a higher level of rates on horses and mules than those fixed as reasonable and proper in the normally lower rated western trunk-line territory was arbitrary and illegal, and the Commission exceeded its lawful authority in ordering petitioners to reduce their carload rates on horses and mules to the level of those concurrently prescribed as just and reasonable in western trunk-line territory.

17. The District Court erred in failing and refusing to adopt petitioners' requested conclusion of law that, there being no evidence or finding that since 1925 there has been a relatively greater improvement in transportation conditions in Texas differential territory and in New Mexico than in Texas common-point territory and the remainder of the Southwest, or that the transportation conditions are now as favorable in one section as in the other, and the evidence of record affirmatively establishing that the contrary is true, the action of the Commission in ordering that the differentials previously authorized by it in 1925 in its Investigation & Suspension Docket No. 2389 be discontinued and abolished is arbitrary, unreasonable, and void.

18. The District Court erred in failing and refusing to adopt petitioners' requested conclusion of law that the action of the Commission in denying the petition of the southwestern carriers (petitioners herein) for reconsideration and further hearing dated November 6, 1933, and in refusing to reopen the complaints to receive evidence showing that a portentous reevrsal of economic conditions with respect to horses and mules, including a phenomenal upturn in value and demand therefor had occurred during that year was arbitrary and unreasonable.

[fol. 164] 19. The District Court erred in failing and refusing to adopt petitioners' requested conclusion of law that the action of the Commission in denying said petition for reconsideration and further hearing, and in refusing to afford the southwestern carriers (petitioners herein) an opportunity to prove that during the year 1933 the earnings and financial condition of the carriers in practically all other portions of the United States had shown a greater improvement than in the Southwest, was arbitrary and illegal.

20. The District Court erred in failing and refusing to adopt petitioners' requested conclusion of law that the history of the proceedings before the Commission in the involved cases relating to the rates on horses and mules discloses a fixed determination and set purpose on its part from the date of its order reopening such proceedings for further hearing and consideration of January 4, 1926, to prohibit the southwestern carriers (petitioners herein) from maintaining carload rates on horses and mules more than 15 per cent in excess of the corresponding carload rates on beef cattle without regard to the facts, and solely to facilitate that purpose the Commission at the same time arbitrarily reopened without complaint the South Dakota and Nebraska cases, in which such 115 per cent relationship of the rates on horses and mules to those on beef cattle had been prescribed, whereas it had been previously rejected as to the rates in southwestern territory, and thereafter otherwise charted a course having that specified end in view, arbitrarily disregarding, ignoring, and refusing to consider all evidence not in consonance therewith.

21. The District Court erred in failing and refusing to adopt petitioners' requested conclusion of law that the

action of the Commission in vacating by its Fourth Section Order No. 11340 of July 24, 1933, the fourth-section relief theretofore granted by its Fourth Section Orders Nos. 9059 and 9183 was arbitrary and void, and that the sole purpose thereof was to coerce the southwestern carriers (petitioners herein) into reducing generally their carload rates on horses and mules throughout the Southwest, it not having been within the power of the Commission under the scope of the issues before it in the various cases under review to compel such general reduction by means of an appro- [fol. 165] priate rate order entered pursuant to the authority otherwise conferred upon it.

22. The District Court erred in failing and refusing to adopt petitioners' requested conclusion of law that, having taken over the function of prescribing maximum reasonable carload rates on horses and mules in southwestern territory, the statutory obligation and duty rested upon the Commission to see that the rates so prescribed by it did not contravene the provisions of any section of the statute, including those of the fourth section, the evidence of record before the Court disclosing that without appropriate fourth-section relief it will be impossible for petitioners to apply the rates prescribed by the Commission in its order of December 11, 1933, without creating preferences and prejudices prohibited by section 3 and without compelling them in many instances to publish lower rates than the rates thereby authorized as reasonable maxima and so depriving them of their long hauls and of the full measure of the earnings which they are entitled to receive under the provisions of sections 15 and 15a.

23. The District Court erred in failing and refusing to adopt petitioners' requested conclusion of law that the order entered by the Commission on February 3, 1934, whereby it purports to grant fourth-section relief "until the effective date of the order to be entered pursuant to a report in Fourth Section Applications Nos. 15445 (amended) and 15473," does not fulfill the duty imposed upon it by the statute, as the petitioners still rest under the onerous burden and obligation in conformity with the Rules of the Commission of justifying permanent fourth-section relief in respect of the rates so prescribed.

24. The District Court erred in failing and refusing to adopt petitioners' requested Finding of Fact No. 1.

25. The District Court erred in failing and refusing to adopt petitioners' requested Finding of Fact No. 2.

26. The District Court erred in failing and refusing to adopt petitioners' requested Finding of Fact No. 3.

27. The District Court erred in failing and refusing to adopt petitioners' requested Finding of Fact No. 4.

[fol. 166] 28. The District Court erred in failing and refusing to adopt petitioners' requested Finding of Fact No. 5.

29. The District Court erred in failing and refusing to adopt petitioners' requested Finding of Fact No. 6.

30. The District Court erred in failing and refusing to adopt petitioners' requested Finding of Fact No. 7.

31. The District Court erred in failing and refusing to adopt petitioners' requested Finding of Fact No. 8.

32. The District Court erred in failing and refusing to adopt petitioners' requested Finding of Fact No. 9.

33. The District Court erred in failing and refusing to adopt petitioners' requested Finding of Fact No. 10.

34. The District Court erred in failing and refusing to adopt petitioners' requested Finding of Fact No. 11.

35. The District Court erred in failing and refusing to adopt petitioners' requested Finding of Fact No. 12.

36. The District Court erred in failing and refusing to adopt petitioners' requested Finding of Fact No. 13.

37. The District Court erred in failing and refusing to adopt petitioners' requested Finding of Fact No. 14.

38. The District Court erred in failing and refusing to adopt petitioners' requested Finding of Fact No. 15.

39. The District Court erred in failing and refusing to adopt petitioners' requested Finding of Fact No. 16.

40. The District Court erred in failing and refusing to adopt petitioners' requested Finding of Fact No. 17.

41. The District Court erred in failing and refusing to adopt petitioners' requested Finding of Fact No. 18.

42. The District Court erred in failing and refusing to adopt petitioners' requested Finding of Fact No. 19.

43. The District Court erred in failing and refusing to adopt petitioners' requested Finding of Fact No. 20.

44. The District Court erred in failing and refusing to adopt petitioners' requested Finding of Fact No. 21.

[fol. 167] 45. The District Court erred in failing and refusing to adopt petitioners' requested Finding of Fact No. 22.

46. The District Court erred in failing and refusing to adopt petitioners' requested Finding of Fact No. 23.

47. The District Court erred in failing and refusing to adopt petitioners' requested Finding of Fact No. 24.

48. The District Court erred in failing and refusing to adopt petitioners' requested Finding of Fact No. 25.

49. The District Court erred in failing and refusing to adopt petitioners' requested Finding of Fact No. 26.

50. The District Court erred in failing and refusing to adopt petitioners' requested Finding of Fact No. 27.

51. The District Court erred in failing and refusing to adopt petitioners' requested Finding of Fact No. 28.

52. The District Court erred in failing and refusing to adopt petitioners' requested Finding of Fact No. 29.

53. The District Court erred in failing and refusing to adopt petitioners' requested Finding of Fact No. 30.

54. The District Court erred in failing and refusing to adopt petitioners' requested Finding of Fact No. 31.

55. The District Court erred in failing and refusing to adopt petitioners' requested Finding of Fact No. 32.

56. The District Court erred in failing and refusing to adopt petitioners' requested Finding of Fact No. 33.

(Note: To avoid unnecessarily encumbering the record, appellants have deemed it unnecessary to set out in full their requested findings of fact listed above.)

57. The District Court erred in its finding of fact that the Interstate Commerce Commission made the orders complained of in the bill of complaint herein after full, adequate and complete investigation of all the facts and that such orders were not arbitrary, capricious, nor unreasonable, but on the contrary, they were made with due deference and regard to the law and were supported by the evidence.

[fol. 168] 58. The District Court erred in its conclusion of law that petitioners are not entitled to the relief prayed for and that their application for a permanent injunction should be denied.

59. The District Court erred in refusing to adopt the findings of fact and conclusions of law prepared and submitted by petitioners.

60. The District Court erred in denying petitioners the relief for which they prayed and in not setting aside and holding void and useless the orders of the Interstate Commerce Commission assailed in this proceeding.

Wherefore, petitioners (now appellants) pray that the said final decree may be reversed and for such other and further relief as the Court may deem just and proper.

Dated July 10, 1934.

J. H. Tallichet, Robert Wilkins Thompson, Solicitors for the above-named Petitioners.

[File endorsement omitted.]

[fol. 169] In United States District Court

Order Allowing Appeal—Filed July 10, 1934

Upon the entering of the final decree in these consolidated causes came J. H. Tallichet and Robert Wilkins Thompson, solicitors for Texas and New Orleans Railroad Company; The Texas and Pacific Railway Company; Abilene & Southern Railway Company; The Denison and Pacific Suburban Railway Company; The Pecos Valley Southern Railway Company; The Weatherford, Mineral

Wells & Northwestern Railway Company; Frank O. Lowden, James E. Gorman, and Joseph B Fleming, Trustees, The Chicago, Rock Island and Pacific Railway Company and The Chicago, Rock Island and Gulf Railway Company, Debtors; L. W. Baldwin and Guy A. Thompson, Trustees, Missouri Pacific Railroad Company, New Orleans, Texas & Mexico Railway Company, The Beaumont, Sour Lake & Western Railway Company, The St. Louis, Brownsville and Mexico Railway Company, and International-Great Northern Railroad Company, Debtors; J. M. Kurn and John G. Lonsdale, Trustees, St. Louis-San Francisco Railway Company, Debtor; St. Louis, San Francisco and Texas Railway Company; Fort Worth & Rio Grande Railway Company; Missouri-Kansas-Texas Railroad Company; [fol. 170] Missouri-Kansas-Texas Railroad Company of Texas; St. Louis Southwestern Railway Company; St. Louis Southwestern Railway Company of Texas; Fort Worth and Denver City Railway Company; The Wichita Valley Railway Company; Burlington-Rock Island Railroad Company; The Colorado and Southern Railway Company; The Atchison, Topeka and Santa Fe Railway Company; Gulf, Colorado and Santa Fe Railway Company; Panhandle and Santa Fe Railway Company; Roscoe, Snyder and Pacific Railway Company; Kansas, Oklahoma & Gulf Railway Company; Midland Valley Railroad Company; Fort Smith and Western Railway Company, L. B. Barry, Jr., Receiver; The Kansas City Southern Railway Company; Texarkana and Fort Smith Railway Company; Louisiana & Arkansas Railway Company; Louisiana, Arkansas & Texas Railway Company; Illinois Central Railroad Company; and The Yazoo and Mississippi Valley Railroad Company, petitioners, and file assignment of errors and petition for appeal, and it is hereby ordered that an appeal by the petitioners in the above-entitled cause to the Supreme Court of the United States from the final decree heretofore filed and entered herein on the 7th day of June, 1934, be and the same is hereby allowed, and that a certified transcript of the record, testimony, exhibits, stipulations, and all proceedings be forthwith transmitted to the said Supreme Court of the United States, said appeal being hereby made returnable thirty days from the date hereof.

It is further ordered that the bond on appeal be and the same is hereby fixed at the sum of Two Thousand Dollars ($2,000), such bond to be approved by ——.

Dated this 10th day of July, 1934.

Albert L. Reeves, United States District Judge.

[File endorsement omitted.]

[fols. 171-174] Bond on appeal for $2,000.00 approved and filed July 10, 1934, omitted in printing.

[fol. 175] IN UNITED STATES DISTRICT COURT

PETITION FOR STAY OF ORDERS OF INTERSTATE COMMERCE COMMISSION—Filed July 10, 1934

To the Honorable Arba S. Van Valkenburgh, United States Circuit Judge, the Honorable Albert S. Reeves and the Honorable Merrill E. Otis, United States District Judges:

Come Now petitioners in the above-styled cause, by their solicitors of record, and show to the Court that the orders entered by the Interstate Commerce Commission on the 24th day of July, 1933, and on the 11th day of December, 1933, in a consolidated proceeding entitled Western Horse & Mule Rates, including I. C. C. Docket No. 12358, entitled Texas Livestock Shippers' Protective League et al. v. Director General, as Agent, Abilene & Southern Railway Company, et al., and divers other complaints and additional proceedings (listed in the margin on the title page of the Commission's report in said Western Horse & Mule Rates of July 24, 1933, 195 I. C. C. 417) relating to the rates on horses and mules, broadly speaking in what is commonly [fol. 176] known as southwestern territory, but excluding I. C. C. Docket Nos. 12268 and 13273, which relate to the rates on livestock from or to points in the states of South Dakota and Nebraska, wherein said Commission has prescribed a lower basis of rates to apply on horses and mules than those previously prescribed by it in the same proceedings to apply in said southwestern territory and now in force and effect therein, have been suspended by said Com-

mission pending the hearing of this cause and are not now in effect but will become effective on the first day of August, 1934, unless stayed, enjoined and restrained, or suspended.

Petitioners further state that they have filed petition for appeal and assignment of errors for the purpose of taking an appeal to the Supreme Court of the United States from the final decree of this court denying their petition in the above-styled cause, and that said appeal has been allowed. Petitioners further state that novel and important questions concerning which there is serious doubt are presented by the bill of complaint herein, and by the assignment of errors filed herewith, which should be reviewed by the Supreme Court of the United States; that the bill of complaint seeking an annulment of the Commission's aforesaid orders was filed and prosecuted by petitioners in good faith, because they believe its said orders are illegal and void; that there are substantial and reasonable grounds for petitioners' contention that the aforesaid orders of the Interstate Commerce Commission, and therefore the decree of this Court upholding same, are contrary to law; that said Commission, without substantial evidence before it in support thereof, and absent any finding or substantial evidence that the horse and mule traffic is subject to the same or similar circumstances and conditions which influenced and were responsible for the level of the rates heretofore prescribed by said Commission in a proceeding entitled Livestock—Western District Rates, 176 I. C. C. [fol. 177] 1, decided June 8, 1931, has nevertheless ordered and directed petitioners to apply in the future rates on shipments of horses and mules in southwestern territory which shall not exceed such previously prescribed rates on fat cattle by more than fifteen per cent for corresponding distances because of certain stated minor differences in transportation conditions between the two classes of livestock and without regard to or consideration of other more important and controlling differences; that said Commission states in the face of its report in said Western Horse & Mule Rates of July 24, 1933, 195 I. C. C. 417, that many rate comparisons presented by defendants therein, your petitioners, in justification of the reasonableness of the rates assailed before said Commission were rejected and not considered by it, which action of the Commission was

unreasonable, arbitrary and capricious, in that the criticisms made by said Commission of such rate comparisons were at most addressed to the weight and not to the relevancy thereof; and that for many other reasons assigned by petitioners in their bill of complaint the assailed orders of the Commission were arbitrary, capricious and otherwise unlawful.

Your petitioners further state that if the assailed orders of said Commission are permitted to become effective the present rates on such horse and mule traffic in southwestern territory will be substantially reduced, with a consequent depletion of their earnings, which are and for years have been less than the return which they are entitled to receive under the provisions of the Interstate Commerce Act, as amended, in order to enable them, under honest, economical and efficient management, to provide adequate and efficient rail transportation service in the public interest. Petitioners further represent that, if they are compelled to establish and maintain the aforesaid reduced rates in compliance with the assailed orders of said Commission, and such [fol. 178] orders are thereafter on appeal of this cause declared and held by the Supreme Court of the United States to be illegal and void, they will be unable to recoup or collect from the shippers the difference between such prescribed rates and their present rates and hence will be deprived of the revenues and earnings to which they are or would be justly and lawfully entitled, but on the contrary, if such assailed orders of said Commission are stayed by order of this Court pending the aforesaid appeal of petitioners subject to the execution of a good and sufficient bond by petitioners to make refund to the shippers or other parties at interest of the difference between the freight charges accruing on the present rates and those which would accrue on the rates prescribed as just and reasonable maxima in said Western Horse & Mule Rates, which bond petitioners are ready and willing to make, and hereby offer to make, then said shippers or other parties at interest will be fully protected from loss or detriment in the event the Supreme Court of the United States on the aforesaid appeal shall uphold and sustain the orders of said Commission herein assailed.

Wherefore, petitioners pray that an order may be entered in this cause staying and restraining during the pend-

ency of the appeal herein to the Supreme Court of the United States the enforcement, operation and execution against petitioners, or any of them, the orders of the Interstate Commerce Commission entered as aforesaid under date of July 24, 1933, and December 11, 1933, in the causes pending before it as hereinabove alleged; that the amount of security to be given by petitioners on account of such stay or restraining order be fixed by this Court, and for such other and further order as the Court may deem proper.

J. H. Tallichet, Robert Wilkins Thompson, Solicitors for Petitioners. Hackney & Welch, of Counsel.

[File endorsement omitted.]

[fol. 179] IN UNITED STATES DISTRICT COURT

ORDER DENYING STAY PENDING APPEAL—Filed July 10, 1934

Counsel for petitioners (now appellants) having submitted their petition for an order staying the operation and enforcement of the orders of the Interstate Commerce Commission herein assailed, the court, having considered same and being fully advised, is of the opinion that said petitioners are not entitled to the relief sought, and their petition for such stay order is hereby denied, to which ruling of the court the petitioners except.

Dated this 10th day of July, 1934.

—— ——, United States Circuit Judge; Albert L. Reeves, United States District Judge; Merrill E. Otis, United States District Judge.

[File endorsement omitted.]

[fol. 180] IN UNITED STATES DISTRICT COURT

NOTICE OF PETITIONERS' APPEAL, WITH ACKNOWLEDGMENT OF SERVICE BY ATTORNEY GENERAL—Filed July 20, 1934

To the Honorable Homer S. Cummings, United States Attorney General:

You are hereby notified that the petitioners in the above-entitled cause, which is a suit to enjoin, set aside, annul,

and restrain certain orders entered by the Interstate Commerce Commission in or with relation to a proceeding before that Commission entitled Western Horse and Mule Rates, 195 I. C. C. 417, being I. C. C. Docket No. 12358 and causes consolidated therewith, including I. C. C. Docket No. 13001, wherein the Chamber of Commerce of Kansas City, Mo., is complainant, have taken an appeal from the final decree made and entered in the District Court in the above-entitled cause on the 7th day of June, 1934, to the Supreme Court of the United States; and that the order allowing the appeal makes the same returnable within thirty days from the 10th day of July, 1934.

This notice is given you pursuant to the provisions of the Urgent Deficiencies Act of October 22, 1913 (38 Stat. L. 220, 221).

J. H. Tallichet, Robert Wilkins Thompson, Solicitors for Petitioners.

Service of a copy of the above notice is hereby acknowledged this 12th day of July, 1934. Elmer B. Collins, Special Assistant to the United States Attorney General.

[File endorsement omitted.]

[fol. 181] IN UNITED STATES DISTRICT COURT

NOTICE OF PETITIONERS' APPEAL, WITH ACKNOWLEDGMENT OF SERVICE BY ATTORNEY, INTERSTATE COMMERCE COMMISSION—Filed July 20, 1934

To the Honorable Nelson Thomas, Attorney, Interstate Commerce Commission:

You are hereby notified that the petitioners in the above-entitled cause, which is a suit to enjoin, set aside, annul, and restrain certain orders entered by the Interstate Commerce Commission in or with relation to a proceeding before that Commission entitled Western Horse and Mule Rates, 195 I.C.C. 417, being I.C.C. Docket No. 12358 and causes consolidated therewith, including I.C.C. Docket No. 13001, wherein the Chamber of Commerce of Kansas City, Mo., is complainant, have taken an appeal from the

final decree made and entered in the District Court in the above-entitled cause on the 7th day of June, 1934, to the Supreme Court of the United States; and that the order allowing the appeal makes the same returnable within thirty days from the 10th day of July, 1934.

This notice is given you pursuant to the provisions of the Urgent Deficiencies Act of October 22, 1913 (38 Stat. L, 220, 221).

J. H. Tallichet, Robert Wilkins Thompson, Solicitors for Petitioners.

Service of the copy of the above notice is hereby acknowledged this 12th day of July, 1934.

Nelson Thomas, Attorney, Interstate Commerce Commission.

[File endorsement omitted.]

[fol. 182] IN UNITED STATES DISTRICT COURT

NOTICE OF PETITIONERS' APPEAL, WITH ACKNOWLEDGMENT OF SERVICE BY ATTORNEY GENERAL—Filed July 20, 1934

To the Honorable Roy McKittrick, Attorney General of the State of Missouri:

You are hereby notified that the petitioners in the above entitled cause, which is a suit to enjoin, set aside, annul and restrain certain orders entered by the Interstate Commerce Commission in or with relation to a proceeding before that Commission entitled Western Horse and Mule Rates, 195 I.C.C. 417, being I.C.C. Docket No. 12358 and causes consolidated therewith, including I. C. C. Docket No. 13001, wherein the Chamber of Commerce of Kansas City, Mo., is complainant, have taken an appeal from the final decree made and entered in the District Court in the above entitled cause on the 7th day of June, 1934, to the Supreme Court of the United States; and that the order allowing the appeal makes the same returnable within thirty days from the 10th day of July, 1934.

This notice is given you pursuant to the provisions of the Urgent Deficiencies Act of October 22, 1913 (38 Stat. L. 220, 221).

J. H. Tallichet, Robert Wilkins Thompson, Solicitors for Petitioners.

Service of a copy of the above notice is hereby acknowledged this 16th day of July, 1934.

Roy McKittrick, Attorney General of the State of Missouri.

[File endorsement omitted.]

[fol. 183] IN UNITED STATES DISTRICT COURT

ORDER EXTENDING TIME TO FILE TRANSCRIPT OF RECORD AND TO DOCKET CAUSE—Filed July 31, 1934

For good cause shown, upon application of appellants, the time in which to file the transcript of the record in the above cause in the Supreme Court of the United States and to docket said cause therein is hereby extended to the 10th day of November, A. D. 1934.

Dated July 28th, A. D. 1934.

Albert L. Reeves, United States District Judge.

[File endorsement omitted.]

[fol. 184] IN THE UNITED STATES DISTRICT COURT

ORDER EXTENDING TIME TO FILE TRANSCRIPT OF RECORD AND TO DOCKET CAUSE—Filed Nov. 9, 1934.

For good cause shown, upon application of appellants concurred in by appellees, the time in which to file the transcript of the record in the above cause in the Supreme Court of the United States and to docket said cause therein is hereby further extended to the 15th day of December, A. D. 1934.

Dated November 7, A. D. 1934.

Albert L. Reeves, United States District Judge.

[File endorsement omitted.]

[fol. 185] In United States District Court

Order Extending Time to File Transcript of Record and to Docket Cause—Filed Dec. 26, 1934.

For good cause shown, upon application of appellants concurred in by appellees, the time in which to file the transcript of the record in the above cause in the Supreme Court of the United States and to docket said cause therein is hereby further extended to the 31st day of January, A. D. 1935.

Dated December 6th, A. D. 1934.

Albert L. Reeves, United States District Judge.

[File endorsement omitted.]

[fol. 186] In United States District Court, Western Division of the Western District of Missouri

In Equity, No. 2449

Texas and New Orleans Railroad Company, et al., Petitioners,

vs.

The United States of America, Defendant

Statement of Evidence—Filed Jan. 12, 1935

Transcript Covering the Offering of Documentary Evidence on Final Hearing for a Permanent Injunction

Be it remembered that on Saturday, March 24, 1934, the above entitled cause, pursuant to order duly entered, came on regularly for hearing and argument at Kansas City, Missouri, before the Honorable Arba S. Van Valkenburgh, United States Circuit Judge for the Eighth Circuit, and the Honorable Merrill E. Otis and the Honorable Albert L. Reeves, Judges of the United States District Court for the Western District of Missouri, of the application of the petitioners against the United States of America for a

final injunction suspending, restraining and annulling to the extent specified in their amended bill of complaint the orders of the Interstate Commerce Commission therein assailed, whereupon there was offered the following documentary evidence:

APPEARANCES:

For Petitioners: Mr. Robert Wilkins Thompson, Dallas, Texas, and Mr. J. H. Tallichet, Houston, Texas.

For Defendant: Mr. Elmer B. Collins, Special Assistant to the Attorney General, Department of Justice, Washington, D. C., and Mr. Nelson Thomas, Attorney for Interstate Commerce Commission, Washington, D. C.

[fol. 187] OFFERS IN EVIDENCE

Mr. Thompson: Your Honors, will it be necessary to read the Bill of Complaint?

Judge Van Valkenburgh: That can be reserved for oral argument. Is this a hearing for preliminary injunction, or final hearing?

Mr. Thompson: Final hearing.

Mr. Thomas: That is my understanding.

Mr. Collins: That is my understanding.

Judge Van Valkenburgh: Then the case will be taken as upon final hearing. Proceed with your evidence, Gentlemen.

Mr. Thompson: We offer Exhibits AA to and including Exhibit LL. These exhibits comprise a duly authenticated copy of the entire record before the Interstate Commerce Commission in the several proceedings that are involved under the title Western Horse and Mule Rates.

The next exhibit we offer is Exhibit MM, which is a certified copy of the Commissions's report in No. 13001, dated April 26, 1924; order in the same case, dated May 27, 1924, and subsequent order dated June 25, 1924, in the same case. This is the case upon which the jurisdiction is predicated.

Mr. Thomas: No objection.

Mr. Thompson: Exhibit NN is a certified copy of the Order in I & S Docket No. 1483, dated July 26, 1922, whereby the case was reopened for further hearing.

Mr. Thomas: No objection. Those are simply the orders of the Commission.

Mr. Thompson: Exhibit OO is a certified copy of the Order in No. 11018, dated November 10, 1924.

[fol. 188] Exhibit PP is a certified copy of the report and order in I & S docket No. 2389, dated July 30, 1925.

Exhibit QQ contains a certified copy of the Commission's report in No. 12358 dated November 10, 1924, petition in No. 12358 dated December 23, 1924, order in No. 12358 dated January 12, 1925, Petition in No. 12358 dated January 9, 1925, Petition in No. 12358 et al dated January 12, 1925, and order in No. 12358, et al, dated March 16, 1925.

Mr. Thomas: No objection.

Mr. Thompson: Exhibit RR is a certified copy of another petition filed by the Texas complainants, No. 12358, dated July 14, 1928.

Exhibit SS contains a certified copy of the proposed report of Examiner Eshelman in No. 12358, Exceptions by Ft. Worth complainants dated December 16, 1925, Exceptions of the Wichita Chamber of Commerce dated Dec. 15, 1925, Exceptions of Kansas City Chamber of Commerce dated Dec. 15, 1925, and Exceptions of defendants dated December 18, 1925. This marks the focal point in this case. It was immediately after that that the entire proceedings were reopened on motion of the Commission.

Mr. Thomas: No objection.

Mr. Thompson: Exhibit No. TT is a certified copy of an additional order reopening these cases entered on January 4, 1926, and a subsequent order entered on February 6, 1928.

Exhibit UU is a certified copy of the Order reopening what we call the South Dakota and Nebraska cases.

Mr. Thomas: No objection.

[fol. 189] Mr. Thompson: Exhibit VV contains a certified copy of the Notice of hearing in No. 12358 et al. dated April 13, 1928, Proposed report of Examiner Simons in No. 12358 et al., Exceptions of southwestern lines, Part I, Exceptions of southwestern lines, Part II, Assignment of oral argument dated January 7, 1930, Order reopening No. 12358 et al. dated February 1, 1932, Notice to parties in No. 12358 et al. dated February 11, 1932, Notice of hearing is No. 12358 et al. dated May 9, 1932, Brief of southwestern carriers upon rehearing, and Report of Commission on rehearing in No. 12358 et al.—Western Horse and Mule Rates, dated July 24, 1933.

Mr. Thomas: Everything in there relating to Docket No. 12358?

Mr. Thompson: Yes, sir.

Mr. Thomas: That also includes a brief upon rehearing?

Mr. Thompson: Yes, sir.

Mr. Thomas: If the court please, we do not think that briefs are material, but for the saving of time, we waive our objections in this instance.

Mr. Thompson: Exhibit WW contains a certified copy of the Fourth Section Order No. 11340 dated July 24, 1933, Order postponing effective date of F.S.O. No. 11340 to Mar. 8, 1934, Order further postponing effective date of F.S.O. No. 11340 to April 17, 1934, and Additional order postponing eective date of F.S.O. No. 11340 beyond April 17, 1934 to May 17, 1934.

Mr. Thomas: No objection.

[fol. 190] Mr. Thompson: Exhibit XX contains a certified copy of the Petition of southwestern carriers for reconsideration, etc., dated November 6, 1933, Reply of South Dakota Railroad Commissioners, Answer of Kansas City Chamber of Commerce, Order denying petition dated December 11, 1933, Rate order dated December 11, 1933, Motion to delete, dated December 22, 1933, Order postponing effective date to April 17, 1934, and Order further postponing effective date to May 17, 1934.

Mr. Thomas: We object to that if the Court please. They are briefs filed by parties who are not parties to this proceeding.

Mr. Thompson: They are parties to the proceeding in the Kansas City Chamber of Commerce case.

Mr. Thomas: I mean the case in court.

Mr. Tallichet: It is offered to show what the Commission had before it.

Judge Otis: You object to the Answer of the Chamber of Commerce of Kansas City, and the Reply of South Dakota?

Mr. Thomas: Yes, sir.

Mr. Thompson: Exhibit YY is a certified copy of Fourth Section Order No. 11458, dated February 3, 1934.

Mr. Thomas: No objection.

Mr. Thompson: Exhibit ZZ is a certified copy of the Commission's Rules of Practice, in which are contained, among other things, the specifications which the carriers

are required to conform to in presenting applications for Fourth Section relief.

Mr. Thomas: No objection.

Mr. Thompson: Exhibit AF is a copy of a telegram dated February 2 and signed by Mr. Judge Reeves to the [fol. 191] Chairman of the Commission on the date this complaint was filed. Our contention is that the Commission has arbitrarily associated the Nebraska and South Dakota cases with our southwestern case in the absence of any rate regulation that authorizes that; and although this Bill of Complaint does not assail that part of the Order relating to the South Dakota and Nebraska cases, the Commission, nevertheless, in extending the effective date, did not let its order as to South Dakota and Nebraska cases go into effect, but held them together for the very purpose, as we contend, of extending the relationship of 115% that had been previously prescribed in the Nebraska and South Dakota cases, without regard to the evidence in the southwestern cases.

Mr. Thomas: We submit that what the Commission did is sufficient. The telegram is simply an unnecessary encumbrance of the record. The telegram is irrelevant.

Mr. Thompson: I had another set of Exhibits, AB to AE, which are reports and orders entered by the Commission. They are not certified, but the Interstate Commerce Act provides that reports and orders issued by the Commission may be received without certification. The first of these is the report issued in the Wichita case, dated March 4, 1921. The next is Investigation and Suspension Docket No. 1483. The next is the South Dakota case, No. 12268. And the last is the Nebraska case, Docket No. 13273.

Mr. Thomas: Were those cases consolidated?

Mr. Thompson: Yes.

Mr. Thomas: No objection.

Judge Otis: Have you any of these ICC reports listed on this page?

Mr. Thompson: No, sir.

[fol. 192] Mr. Thompson: We next offer the additional reports listed, which will carry us down to Exhibit AQ. These are reports relating to matters upon which we rely in our argument and we desire to have them physically in the record. They are in the published reports of the Commission, and it is our desire to have them in here physically.

Mr. Thomas: I submit that you should not encumber this record with page after page of these reports.

Mr. Tallichet: That is perfectly agreeable. We simply do not want objection offered to the Court considering these records.

Mr. Thomas: Not at all. We will not object to them.

Mr. Thompson: This telegram should be marked Exhibit AF. Exhibit AG is a certified copy of an order of the Commission in what is known as the Western District Livestock Case, Docket No. 17000-9. That is the case in which the rates on beef cattle were prescribed.

Mr. Thomas: That is objected to, if the Court please, because the Commission had already proceeded under that order of investigation and had made its report in an order pursuant to which the rates have gone into effect. Those rates are not subject to attack in this case.

Mr. Collins: The same objection.

Judge Otis: I suppose you object to all these Exhibits on this last page?

[fol. 193] Mr. Thomas: We will.

Mr. Thompson: Exhibit AH is a copy of a document issued by the United States Census Bureau entitled "The Farm Horse," in which reference is made to changed economic conditions referred to in our petition for re-hearing.

Mr. Thomas: We object to that, if the Court please, on the ground that everything that has any bearing on this case that is stated in that Census document is already before the Commission.

Mr. Thompson: Exhibit AI is a certified copy of a report issued by the Department of Agriculture, which was mentioned in the Motion to Delete filed with the Commission.

Mr. Thomas: Same objection.

Mr. Thompson: Exhibit AJ is a certified copy of a document issued by the United States Department of Agriculture entitled "Crops and Markets," for February, 1934.

Mr. Thomas: Same objection.

Mr. Thompson: Exhibit AK is a certified copy of two reports issued by the United States Department of Agriculture, dated January 1, 1932, and January 1, 1934, on the same point.

Mr. Thomas: Same objection.

Mr. Thompson: Exhibit AL is a certified copy of the testimony of witness M. Fies at a hearing before the

Commission September 26, 1933, in which he commented on the increase in the value of horses that had taken place [fol. 194] during that year, and that was specifically referred to in the Petition for Reconsideration. I reproduce that to support the allegation under the petition.

Mr. Collins: But you did not offer it to the Commission in this case.

Mr. Thompson: It was brought to the attention of the Commission.

Mr. Collins: But you made an offer of that testimony in the hearing of this case?

Mr. Thompson: The hearing was closed in June, 1932, more than a year before this order was issued.

Mr. Collins: The testimony was taken in another case, I have the same objection.

Mr. Thomas: The Commission's objection to that, if the Court please, is limited to the objection that those facts have no probative value in this Court. If it had been a part of what was finally considered by the Commission before it closed this case, we have no objection.

Mr. Thompson: It was before the Commission in its own files and brought to its attention.

Judge Van Valkenburgh: Of course, that will be brought before us later.

Mr. Thompson: Our next document, Exhibit AM, is a certified copy of certain financial reports issued by the [fol. 195] Commission showing the financial condition of the carriers and the changed conditions that occurred in 1933, and subsequent to the closing of the hearings in May, 1932, all of which are brought to the attention of the Commission in the Motion for Re-consideration and Re-hearing that was filed in November, 1933, and it was pointed out as far as the matters had developed at that time.

Mr. Collins: Were these statements referred to by their numbers as referred to here?

Mr. Thompson: I couldn't say we specifically referred to that, but we referred to the financial situation that is shown in the statements, the part issued by the Bureau of Statistics, and in the inner consciousness of the Commission.

Mr. Thomas: And your motion requested the Commission to consider that?

Mr. Thompson: We did refer to the net railway operating income of the carriers and the failure to make the earn-

ings to which they are entitled under the law; but I do not recall we specifically referred to these statements by number.

Mr. Tallichet: These things would have been admissible in evidence before the Commission had the Commission granted this petition for re-consideration and re-hearing, dated November 6, and the conditions proved here are referred to in general terms in the Motion.

Mr. Thomas: And it was suggested to the Commission that its reports would show the facts you allege?

[fol. 196] Mr. Tallichet: That it had the evidence in its possession. The Commission can assert its own inner consciousness and base an order on its own knowledge.

Mr. Thomas: Was the prayer for a re-hearing not based upon the Commission's unwillingness? Didn't you say, "If the Commission is unwilling to do it, then we ask permission to re-open it"?

Mr. Tallichet: It was phrased in that way.

Mr. Thomas: We have no objection to that.

Mr. Thompson: In addition to that we have another statement issued by the Commission in December, 1933, Statement No. M-125, which contained cumulative figures for the year 1933 as compared with 1932.

Mr. Thomas: Subject to the same reservations and conditions that I made in connection with the previous statement.

Mr. Thompson: That is Exhibit No. AN.

The last one we have, tendered as Exhibit AO, is a certified copy of an order entered by the Commission in Docket No. 24674, on March 6, 1934. That is a recent decision of the Commission on which we sought to rely, but the decision was made by Division 4.

Mr. Thomas: We object to that, if the Court please, as being simply an extract from the report of the Commission, which in due time will be bound.

Mr. Thompson: Not these orders.

[fol. 197] Mr. Thomas: Orders made subsequent to the orders involved in this case, in another matter, so we object to it.

Mr. Thompson: The Commission has discontinued even publishing the contemporaneous orders. That completes the presentation of our documentary evidence.

In support of the tenders that have been previously

made, I now hand to the reporter a list of the various documentary exhibits that have been so far presented.

Judge Otis: What is it you intend to prove orally?

Mr. Tallichet: We first wish to prove a summary of the documentary evidence with respect to net railway operating income of the Railroads of the United States by regions for 1932 compared with 1933, giving the figures and showing that while taking 1932 net railway operating income of all the Class I roads as 100%, those same roads for 1933 showed 145%; that in this southwestern region, which is the region affected by these orders, there was no recovery, but that on the contrary, using the Commission's method of grouping the roads, the earnings were practically stationary, 99.6% in 1933 of what they were in 1932.

But we further expect to show that while in its road grouping as affected by these rates, the Pan Handle, Santa Fe, Ft. Worth & Denver, Chicago, Rock Island & Gulf are entirely southwestern lines, and the A. T. & S. F. and the Chicago, Rock Island & Pacific are largely southwestern lines, in the accounting they are grouped as central west-
[fol. 198] ern lines and when their earnings are grouped there would be a decline in the receipts. In other words, it was close to a collapse of earnings in the southwestern district in the face of large increases in the United States.

Judge Van Valkenburgh: Does that all appear in the evidence?

Mr. Tallichet: None of that is before the Commission. It is all in these last certificates, except the showing of these lines, which ought to be made for a correct understanding.

Judge Van Valkenburgh: How do you establish what ought to be made, by what evidence?

Mr. Tallichet: By parol evidence, simply to the effect that the lines themselves are wholly or largely in the southwestern territory or region. They are affected by the order; yet the Commission in its accounting classification, for certain reasons which we do not challenge, happens to put these lines in the central western region. We want to show that we are a great deal worse off than the Commission thinks we are, than the records of the Commission would indicate we are.

Mr. Thomas: Can't you, in your briefs to the Court, recommend that same thing and point out the items and even the statistics which would result in it, and can't the

Court then determine whether or not they should be reallocated?

Mr. Tallichet: I do not think it affirmatively appears in the data now before the Court that these roads are placed with the central western lines for statistical purposes and with the southwestern lines for rate adjustment.

Judge Van Valkenburgh: Was this matter urged before the Commission?

[fol. 199] Mr. Tallichet: It could not have been.

Judge Van Valkenburgh: How could it be urged upon us?

Mr. Tallichet: Simply that the Commission was asked to reopen it and hear evidence to that effect. We go probably a month further. This is evidence we told the Commission in a general way we wanted them to hear and wanted them to consider, and which they refused to consider.

Judge Van Valkenburgh: That appears in your application?

Mr. Tallichet: It appears in a general way, in the general way in which such matters are brought to the attention of the Commission.

Judge Van Valkenburg: Of course, there can be things too general to specify a contention. If they are brought there sufficiently to raise the question before the Commission, of course we will entertain them.

Mr. Tallichet: They were brought there in the customary way, Your Honor.

Mr. Collins: There was just simply this, the broad assertion in the petition for rehearing that the carriers' financial condition had continued to decline. I suppose the Commission, under the law as these gentlemen will urge it to the Court, would be compelled to let down the bars and let them come in.

Mr. Thomas: Further than that, we say in answer, the Commission had before it a list of the carriers which it was treating as being southwestern lines and it certainly had before it a list of the carriers which it treated as western lines. The Commission certainly had all that before it. It is not adding anything to this record except someone's opinion that a proper way to meet this situation, this rate situation, would be for the Commission to take a certain [fol. 200] view of it. The Commission has exercised its discretion.

Mr. Collins: It may be well to receive the document subject to the objection, and I make the objection now on behalf of the defendant, United States, that in order for this Court to determine whether as a matter of law the Commission acted arbitrarily in rejecting the carriers' petition for rehearing, the Court will be compelled to and will be governed entirely by the sufficiency of the allegations. It is in the Court's hands as to whether or not there was sufficient alleged there to cause the Commission to say that actual proof should be given to it concerning items which might change its rates.

Judge Otis: Isn't the summary in documentary form?

Mr. Tallichet: Yes.

Judge Otis: I think that is the thing to do.

Judge Van Valkenburgh: It may be put in subject to the objection that Mr. Collins has made.

Mr. Tallichet: We are perfectly willing.

Judge Van Valkenburgh: What is the number of that?

Mr. Thompson: That is No. AP.

Mr. Tallichet: In offering this next exhibit, our purpose is to prove by a witness whom we offer here that while the condition of edible livestock continued as it was, very much depressed, probably justifying very much reduced and depressed rates to move the traffic, the conditions with respect to horses and mules during the period in which we asked the Commission to let us introduce proof was improving and continued to substantially improve, it also being evidence offered in support of the petition for reconsideration and reopening filed November 6th, 1933, the al-
[fol. 201] legations in that petition being, as in the former cause, somewhat general, and this is proof making it specific.

Mr. Collins: I make this suggestion in behalf of the United States. I am willing to stipulate that if the witness were put on the stand he would testify in accordance with this written document; but I object to it on the same grounds I indicated as to the previous document.

Mr. Thomas: The Commission adds the objection that the trend which purports to be shown in this document was already before the Commission in the cases under consideration.

Mr. Tallichet: In reply to that, then, we will only offer that part which took place after the closing of the last hearing of the Commission in May, 1932, up to the other. This

is made to show what we would have proved had the Commission reopened the case.

Mr. Thompson: That is No. AQ.

Mr. Tallichet: We now come to another phase of the case. In its order, the Commission has not afforded what is known as Fourth Section relief. It is, of course, impossible to go into these matters and to see just how the Fourth Section will be affected until you know what the Commission is ordering.

It is our position in this case that the Commission is as much to be bound by the Fourth Section as are the carriers, when they make rates, and that either one of two things must be done when they make rates, either the rates must be so adjusted as to avoid violation of the Fourth Section, or an appropriate exception must be made that the rates may be made effective notwithstanding the Fourth Section. The question, of course, is whether or not the rates would still be compensatory to the carriers notwithstanding the adjustments.

[fol. 202] We have here a series of nine maps which we offer, each showing one instance of how these rates of the Commission in the absence of the Fourth Section will operate. We show each case in one color, green, for the rate making distance ordered by the Commission under its scale, and we also show in another color, red, a practical, usable route for the actual movement of that traffic, and over which the Commission has, in express terms, ordered us to apply the rates. We show that the Commission has ordered us to do something which the Statute forbids us to do, which the Commission may remedy by adjustment of the rates or providing an exception, as it did in the earlier horse and mule rates in 1924.

We offer these for the purpose of getting before the Court a brief statement which I take it the Commission itself knows. Its body of trained experts, of course, would realize it on checking it; but a Court could not know it.

Judge Van Valkenburgh: Was this matter before the Commission?

Mr. Tallichet: It is a matter which would undoubtedly be before the Commission, but which demonstrates that the Commission has violated the Statute.

Judge Van Valkenburgh: Did you make any suggestion with respect to it?

Mr. Tallichet: It was suggested to the Commission that it ought to bear in mind the Fourth Section, and it was not

done. As to how it would do it, why no. It is our position that the Court does not discharge its duty under the law by saying——

Judge Van Valkenburgh: That is a part of the argument on the case. What we want to do is to confine matters of that sort to argument on the case.

Mr. Thomas: If the Court please, in connection with that [fol. 203] the Commission invited the carriers to file applications for the Fourth Section Relief. They did so, and they granted an order to be effective at the same time these new rates go into effect. I have here certified copies which we expect to offer. Their allegations show they have made application and have been granted this Fourth Section Relief temporarily.

Judge Van Valkenburgh: You said "temporarily". That would apply permanently, wouldn't it?

Mr. Thomas: Only as the Commission continues it. It is subject to a final hearing and a possible grant. If the Commission then refuses it, he might have his right to come before the Court.

Judge Van Valkenburgh: Is the evidence, documentary or otherwise, all in?

Mr. Tallichet: I rather think that counsel has said he hasn't any objection to our using this in argument.

Mr. Collins: I make this suggestion for the Court. If counsel wants to use this in argument he may, or he may even lay it before the Court.

Judge Van Valkenburgh: We do not need to argue the proposition on the suggestion of admission. The Court wants to get down to the argument.

Mr. Tallichet: We would like to make the tender anyway. We would like to have a show-down. We reserve an exception on the introduction. We would like to have them marked.

Judge Van Valkenburgh: They are tendered for the information of the Court?

Mr. Tallichet: Yes; of course, we make formal tender for the record.

[fol. 204] Mr. Collins: Then, I will have to withdraw my consent and it will be received subject to the same objection as to the other documents.

Mr. Thompson: They will be Nos. AR-1, AR-2, AR-3, AR-4, AR-5, AR-6, AR-7, AR-8, and AR-9.

Mr. Tallichet: That is all.

Mr. Thompson: That is all.

Mr. Thomas: If the Court please, I offer in evidence copy of applications made by the southwestern carriers for Fourth Section Relief with respect to these new rates. These applications were followed by a Fourth Section order, which is included in the list of certified documents introduced by the plaintiffs.

Mr. Tallichet: We are not objecting to these, but we would like the proof. It was filed to prevent ourselves getting into the situation of being under penalty for failure to comply with the Order of the Commission.

Mr. Thomas: I cannot consent to that, if the Court please. The Carriers have filed this, appealing to the Commission, and they have gotten the relief sought.

Mr. Tallichet: All right. We will make no objection to that offer, then.

Mr. Thomas: I offer it as Defendant's Exhibit "A".

Judge Van Valkenburgh: All right, gentlemen. If that is all of the evidence, we will now listen to the argument.

[fols. 205 & 206] (Exhibits AA to ZZ and AB to AR-9, inclusive, enumerated and listed in the foregoing transcript of documentary evidence have been omitted in printing save as to those parts thereof specifically listed in the accompanying stipulation designating parts of the record to be printed, but such exhibits are otherwise before the Court as provided in said stipulation designating parts of the record to be printed, infra.)

[fol. 207] EXHIBIT AA

Narrative Statement of Evidence Before the Interstate Commerce Commission

Before the Interstate Commerce Commission

Docket No. 11018

WICHITA BOARD OF COMMERCE et al., Complainants,

vs.

WALKER D. HINES, Director General of Railroads, Alexandria and Western Railway Company et al., Defendants

Wichita, Kansas, January 16, 1920.

Before George F. Graham, Attorney-Examiner.

Met pursuant to notice.

APPEARANCES

W. P. Huston, Wichita, Kans., appearing for complainants.

A. B. Enoch, Chicago, Ill.; appearing for all defendants.

Proceedings

Exam. Graham: Gentlemen, the Interstate Commerce Commission has set for hearing at this time and place the case of Wichita Board of Commerce et al. against the Director General of Railroads and the Alexandria and Western Railroad Company et al.

This complaint was filed November 15, 1919, and alleges that the rates on horses and mules in carload lots from Wichita, Kansas, to points in Arkansas, Louisiana, and Texas, also to Memphis, Tennessee, and points basing thereon, were and are unjust and unreasonable, unjustly discriminatory and unduly preferential, in violation of sections 1, 2, and 3 of the Act to Regulate Commerce and sec- [fol. 208] tion 10 of the Federal Control Act, in that they are higher for the same or comparable distances than rates from competitive points of origin in Kansas, Iowa, Nebraska, and Missouri, and also in some instances are higher than the aggregate of intermediate rates, in violation of section 4. Just, reasonable and non-discriminatory rates are prayed for the future and reparation is sought on all shipments made since November 17, 1917, by the C. B. Team Mule Company to Forth Worth, Texas, Texarkana, Texas-Arkansas, and Meridian, Mississippi, to the extent that the charges exacted exceeded the aggregate of intermediate rates contemporaneously in effect.

Mr. Huston: The carriers petitioned the Commission to have complainants make their complaint more specific, and the Assistant General Counsel for the Director General sent me a copy of that petition and stated the complaint was indefinite as to the competition from points of origin. We immediately wired that we were willing to confine our case to Kansas City and points taking the same rates so far as it was against the competition of other markets.

Exam.: Before you begin the testimony it might be well to somewhat define what is meant by points basing on Memphis.

Mr. Huston: The carriers have objected to making through rates to points in the Southeast, and it seems also to have been their desire to make a rate to Memphis which would apply to any traffic going beyond, the same as in effect to-day and the same as applies from Kansas City. We are asking for a proportional rate to Memphis and beyond compared with the Kansas City rate.

Exam. Graham: You are not asking for joint rates into the Southeast over all lines?

Mr. Huston: No.

[fol. 209] E. C. TEAM was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination.

By Mr. Huston:

I am a horse and mule dealer and a member of the firm of C. B. Team Mule Company, a partnership; that firm has been located in Wichita since 1914, and ships horses and mules in carloads from Wichita to points in the South and Southeast, principally Arkansas, Texas, Mississippi, Alabama, Louisiana, Georgia, North and South Carolina; in 1918 we shipped 6,309 head in carload lots. The most severe competition we meet in shipping to that territory comes from Kansas City and St. Joseph, their freight rates being less than ours, and we have received complaints from our customers about the freight rates from Wichita. The average weight of a 36 foot 6 inch car of horses and mules would be about 24,000 pounds, some probably less; caretakers are very seldom sent with our shipments of horses and mules, and claims are filed on not over one or two per cent of the cars we ship. The horses and mules in the shipments listed in the reparation statement attached to our complaint were the property of the C. B. Team Mule Company, which paid and bore the freight charges thereon.

Cross-examination.

By Mr. Enoch:

In 1914 my firm handled between 2,500 and 3,000 head of horses and mules, which increased gradually until 1918, when 9,147 head were handled, with 8,181 head in 1919.

The Kansas City and St. Louis buyers work the same territory our buyers work, and in making our sales at Wichita we have to have prices which will meet the competition of [fol. 210] Kansas City and St. Louis. In making our purchases in the country our idea is to buy the animals as cheaply as possible and try to sell them for a profit.

Examination.

By Examiner Graham:

There is no primary horse and mule market which govern the prices of horses and mules throughout the distributing territory; the mule dealers at Kansas City sell in the same trade territory with me; no dealer at Kansas City has a branch at Fort Worth, but they sell to dealers who ship to Fort Worth, although I do not know to what extent. The rate from Wichita to Fort Worth is the same as that from Kansas City and St. Joseph to Fort Worth, but the through rate is higher than the combination of intermediate rates, which is the basis of the complaint. The rates from Kansas City to Memphis, as well as to points in Texas other than Forth Worth and to points in Louisiana and Arkansas, are less than from Wichita, and where the distance from Wichita is less we think we should have a lower rate than Kansas City. Our policy has always been to sell when we can make a profit, not necessarily for what the horses and mules would be worth in Kansas City, and it may be that the success of our business has depended on our being able to sell at a price lower than the Kansas City price. We sell F. O. B. Wichita, and the buyers complain after they find they have to pay higher freight charges from Wichita than they do from Kansas City.

Dan C. Smith was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination.

By Mr. Huston:

My residence is at Wichita, Kansas, and I am General Manager of the Wichita Union Stock Yards Company,

[fol. 211] which owns the equipment and barns used by the C. B. Team Mule Company. Prior to the building of the barns in 1914 and during their construction I complained to the General Livestock Agents of the Santa Fe, Rock Island, Missouri Pacific and Frisco of what we consider a rate discrimination against Wichita on shipments to the trade territory in the South and Southeast; they agreed to give the matter consideration but failed to do anything about it. There are two large horse and mule dealers in Wichita and some small dealers, and we do not feel that Wichita is getting a fair percentage of the horse and mule business because of the proportionately higher rates from Wichita to the consuming territory than from the competing markets on the Missouri River. In 1914 our barns had about 30 per cent of their present capacity, and our facilities have been increased each year since then; the western country is developing rather fast agriculturally in the last few years, producing more agricultural products than in previous years, as indicated by a statement made by the Secretary of Agriculture.

Cross-examination.

By Mr. Enoch:

The other large horse and mule dealer in Wichita besides the C. B. Team Mule Company is the Wichita Horse & Mule Commission Company, which has been in business only a short time. The consignors in the country ship their horses and mules to Wichita for sale at public auction, and the buyers from the East and Southeastern territory or Texas come here and bid on the animals, one by one being accumulated until they get a carload that they ship to their territory, just as is done in the Kansas City market.

Examination.

By Mr. Huston:

I think it would be more proper to compare rates on cattle and hogs with horses and mules than to compare the [fol. 212] rates on horses and mules with beans and wheat and other dead commodities; our complaint is based entirely on the fact or contention that it should not be more hazardous and more expensive to ship horses and mules from Wichita than from Kansas City.

Re-cross examination.

By Mr. Enoch:

There is not any movement of cattle from Wichita to the South and Southeast, as the market is not that way; the market on cattle is from the West to the East and from the Southwest to the Northeast. There is quite a large movement of cattle from Texas to Wichita.

W. P. HUSTON was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination. (pro se):

I am Traffic Manager of the Wichita Board of Commerce, a commercial organization incorporated under the laws of the State of Kansas for the betterment of the city of Wichita and the mutual protection of its members in the matter of transportation rate conditions and not for profit; the C. B. Team Mule Company, the other complainant, is a member of our organization.

Exhibit 1 is a drawing showing the territory involved with the exception of the territory beyond Memphis that bases on the Memphis rate. Representative points of destination are shown. The present rates on horses and mules to Arkansas are on the class A basis, except that to points on the Frisco a mileage scale applies which compares favorably with rates from Kansas City. The class A basis which applies by the other routes exceeds the combination of local rates on Kansas City in practically all instances. Specific [Vol. 213] rates are published from Kansas City to all points in Arkansas.

Class A rates apply on horses and mules from Wichita to points in Louisiana west of the Mississippi River, while to points in Louisiana east of the river rates from Wichita are made by the Kansas City combination. Specific rates apply from Kansas City to all stations in Louisiana on a much lower basis than the rates from Wichita, although the distance from Wichita is approximately 24 miles less than from Kansas City. On all other classes and commodities the same rates apply from Wichita and Kansas City to all points in Louisiana west of the Mississippi River.

From both Wichita and Kansas City specific rates on horses and mules are published to Memphis, the rate from Wichita being 141 per cent of the Kansas City rate, while the distance from Wichita is only 113 per cent of the Kansas City distance.

From Kansas City to Texas the class A rate applies on horses and mules. The purple line shown on Exhibit 1 defines the Kansas City territory on the north and the Dallas-Fort Worth and Texas common-point territory on the south. It will be seen that there is quite a large group in both places to apply from Wichita, which is 213 miles closer to quite a number of the points. We are alleging that the rates from Wichita to Texas on horses and mules are unreasonable per se as they are entirely out of line with the general level of livestock rates in western classification territory.

Prior to November 1, 1916, the rate on horses and mules from Kansas City territory to Texas was on the class C basis, on which date the classification was increased to class A.

[fol. 214] The rate on horses and mules from Kansas City and Wichita to Springfield, Mo., is the same, but the through rate from Kansas City to Memphis is much less than from Wichita to Memphis. The Kansas City rate also applies from St. Joseph, 62 miles further north, but we are not asking for the Kansas City rate.

Exhibit 2 is an extract from the decision of the Commission in the Memphis-Southwestern Investigation, 55 I. C. C. 515, decided last month, which states that the transportation conditions in the States of Arkansas, Oklahoma, Louisiana, Texas, and southern Missouri are not sufficiently different to justify a difference in the rates.

Exhibit 3 is an extract from the decision in 23 I. C. C. 656, in which the Commission practically held that the rate from Wichita to Memphis should be the same as from Kansas City to Memphis.

Exhibit 4 is a study of rates on horses and mules in western classification territory from St. Louis and Kansas City to various points, together with distance scales applicable in the same general territory. The result of this exhibit is shown in the following exhibits.

Exhibit 5 is a drawing which shows the location of the stations used in Exhibit 4. The points selected are scattered over the Southwest with the exception of Texas.

Exhibit 6 shows the result of the study contained in Exhibit 4 compared with rates on beef cattle. These cattle rates were voluntarily established by the carriers January 20, 1919, and are the rates we propose for application on horses and mules from Wichita to points in Arkansas, Louisiana, and Texas.

[fol. 215] With respect to transportation conditions, the empty movement of stock cars from Wichita is southbound, as Wichita is a livestock market and the cars are always available for southbound shipments of horses and mules. No claims for shrinkage or failure to make the market are filed on shipments of horses and mules. The shipments made from Wichita move in ordinary freight trains unless there is a movement of 25 cars or more, when a special train is furnished. In the Cattle Raisers case, 11 I. C. C. 96, the Commission found that the charge for feed was usually from two to four times the actual value, and the profit on feed pays the cost of furnishing unloading pens and the expense of loading and unloading. We feel these conditions justify us in asking for this basis, as the cattle rate applied from Wichita on horses and mules makes approximately the same rate, mile for mile, as the horse and mule rate from Kansas City. The only case I can locate where the Commission has passed on the difference that should exist between horses and mules and cattle and hogs is 47 I. C. C. 287, where horses and mules, as well as hogs, were made 120 per cent of the cattle rates. In that case, they were all moving in the same direction and from country points, which necessitated the moving in of empty cars for the shipments.

Exhibit 7 shows the present and proposed rates on horses and mules from Wichita to representative points in Arkansas, Louisiana, and Texas, also Memphis, compared with the rates from Kansas City. We are proposing the same rate to New Orleans and Baton Rouge that applies from Kansas City. The rate to Memphis is arrived at by adding to the Kansas City rate the difference under our proposed scale represented by the difference in the distance from Wichita over that from Kansas City.

[fol. 216] Exhibit 8 shows the rate from Wichita to Wichita Falls, Dallas, and Beaumont, Texas, compared with other rates in western classification territory.

Exhibit 9 is an extract from the decision in 52 I. C. C. 558, where the Shreveport scale was established on horses and mules from Natchez, Mississippi, to points in Texas.

Exhibit 10 shows the combination of local rates from Wichita to representative points in Arkansas, Louisiana, and Texas, also Memphis. Practically all the combination rates are around $60.00 per car less than the through rates, while the combination mileage in a great many instances is much greater than the through mileage from Wichita.

Exhibit 12 shows the percentage relation of rates on horses and mules as compared with rates on cattle and hogs between Kansas City and stations on the main line of the Santa Fe.

Exhibit 13 shows the percentage relation of the distance scale between points in New Mexico on the Santa Fe.

Exhibit 14 is a similar comparison of the rates from Kansas City to stations on the Santa Fe Lines in Texas.

Exhibit 15 similarly shows comparisons from Kansas City to stations in Texas on the Rock Island.

Exhibit 16 shows the percentage relation between Kansas City and stations on the main line of the Kansas City Southern.

Exhibit 17 is a similar comparison between St. Louis and stations on the Missouri Pacific in Arkansas and Louisiana.

Exhibit 18 is a similar comparison using a distance scale applying between Colorado and Kansas to Missouri on the Missouri Pacific.

Exhibit 19 is a comparison of the distance scale between [fol. 217] points on the Frisco in Kansas and Arkansas similar to the previous exhibit.

Exhibit 20 shows the percentage relation between Omaha and stations on the Union Pacific and Oregon Short Line directly west for distances up to 1,350 miles.

Exhibit 21 shows the percentage relation of the rates prescribed in the Shreveport case, 48 I. C. C. 351 and 48 I. C. C. 294.

Between Wichita and points in Arkansas, Oklahoma, New Mexico, Texas, and Louisiana west of the Mississippi River, there is in effect a scale of mileage rates on cattle and hogs, and in filing the complaint we named the carriers party to that tariff. In Exhibit 2 I have given a comparison of the rates on cattle and hogs, which are the rates stated in that tariff.

Referring again to Exhibit 7, the average earning per loaded car-mile on the Santa Fe for the year 1917, to be compared with the earnings shown in Exhibit 7, was 18.44 cents. During the same period the earnings were 17.99 cents on the Chicago, Rock Island and Pacific, 21.45 cents on the Missouri Pacific, and 24.25 cents on the Frisco. These statistics include all freight for an average haul of 200 to 300 miles, and were taken from the report of the Public Utilities Commission of Kansas of November 30, 1918. The average haul of horses and mules is considerably more than that.

We are willing to propose a rate on horses and mules from Wichita to Memphis that will yield the same earnings per loaded car-mile as the rate from Kansas City to Memphis. The rate from Wichita to Thackerville, Oklahoma, is $156.65 per 36 foot 6 inch car, while the rate to Gainesville, Texas, 12 miles further on the same line, is $207.00 for a 36 foot 6 inch car. That condition exists on all the lines running from Wichita to points in Texas.

[fol. 218] In 36 I. C. C. 79, the Commission found that 85 per cent of the claims for loss and damage on livestock is on account of loss of market and incidental shrinkage in weights and value of the livestock. Only about 15 per cent of the total claims was paid for loss of and injury to livestock, and the amount actually paid by the carriers because of loss and damage does not average more than 25 cents per car. The present rate from Wichita to New Orleans is based on the Kansas City combination, via which route the distance is 1,081 miles, while the short-line distance from Wichita to New Orleans is 844 miles.

(Complainants' Exhibits 1 to 22, witness Huston, were duly received in evidence.)

Complainants rest.

F. C. Dunbeck was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination.

By Mr. Enoch:

I am Traffic Assistant of the Frisco Railway Company, with headquarters at St. Louis. My testimony will deal

only with the rates to Memphis, Tenn., Little Rock, Ark., and New Orleans and Baton Rouge, La. The causes which led up to the establishment of the unusually low scale of rates on horses, particularly from the west, are outlined in the Commission's opinion in I. & S. Docket No. 137, Rates on Horses and Mules from Kansas, 26 I. C. C. 47, at page 48, where a summary is given of the history of the rates as developed on behalf of the carriers. The Commission there states that at one time the rate from the Missouri River to [fol. 219] Chicago was $50.00 per standard car, which had become $82.50 when that decision was rendered on January 6, 1913. At the present time the Chicago rate is $97.50.

The low basis of rates is still reflected in the present rates to the South and Southeast. Another factor that has contributed to holding down the rates from the Missouri River is the level of rates carried from St. Louis to that territory. As St. Louis is the strongest competitor of Kansas City, so it must also be of Wichita as to that market, and in our opinion it would be just and proper, if not more so, for complainants to claim discrimination against the rates from St. Louis rather than from Kansas City.

In some instances the rates named in the complaint are incorrect. For example, the rate from Wichita to Little Rock is $114.00 instead of $143.75 as there shown. There is a combination rate of $176.50 from Wichita to Baton Rouge and New Orleans, based upon the Memphis combination, and not the rate of $191.00 shown in the complaint. Also, the rate from Kansas City to Baton Rouge and New Orleans is not $136.00, as stated in the complaint, but is $125.00.

We expect to publish in the next sixty days on short notice a rate of $109.50 from Wichita to Memphis, being the combination on Bridge Junction, which is $4.50 less than the present rate. We further contemplate making our rate from Kansas City to Memphis $88.00 instead of $81.00, as at present, which will further reduce the difference in the present rates from Wichita and Kansas City to Memphis. That proposal is based on the thought that the Kansas City rate is too law. In the Memphis-Southwestern case both Memphis and Kansas City strongly protested against any increase in the Memphis to Kansas City rates if it [fol. 220] would result in a corresponding increase of rates from Chicago to Kansas City on the theory that rates between Kansas City and Memphis have always been the

same as from Kansas City to Chicago. As already stated, the rate on horses and mules from Kansas City to Chicago was advanced to $97.50 per car, while the rate from Kansas City to Memphis has remained $81.00 per car. On the basis claimed by the Kansas City and Memphis people we would have the right to advance the rate beyond $88.00 in order to put it on the proper basis. The effect of these contemplated changes will be to reduce from $33.00 to $21.50 per car the difference of Wichita over Kansas City, which difference we feel is fully justified by the difference in the conditions that surround the movement of this traffic from Wichita versus Kansas City and Memphis and beyond.

From Kansas City to Memphis the shipments are run through without stopping in transit for feed or rest, as the run is made within the 28 hours fixed by the statute. Under the train schedules, shipments from Wichita must be stopped at Springfield the next afternoon and switched to the stock yards and there held at carrier's risk until the second morning when they are carried on to Memphis, where they arrive that night. Our Superintendent of Transportation estimates that the cost of setting these cars out, taking them to the stock yards, and putting them back into the train, to say nothing of the risk assumed, amounts to $7.50 per car. The running time of our slow freights from Kansas City to Memphis is about 36 hours. I do not know what is the additional per-car cost for the special service on the 28-hour schedule over the 36-hour service, but it would cost more money. If we got only $7.50 more for one car it would not offset the extra cost, but if we got [fol. 221] $7.50 per car for every car in the train it might. The horse and mule shipments, especially from Wichita, move generally in single carloads, not very often in lots of more than one car, and the same care and attention must be given that one car that we would give to five.

That the transportation of horses and mules carries with it a greater risk than does any other class of traffic, including other livestock, is evidenced from the fact that in 1916 the loss and damage paid by our company on all traffic amounted to 1.13 per cent of the gross earnings of the system, whereas on horses and mules the loss payments amounted to 4.6 per cent. This is because the value of horses and mules, according to the claimants, is impaired the moment an animal receives a scratch or some blemish

which, in the case of other livestock, would have no effect on its value. See also what is said on that feature in 22 I. C. C. 50 and 26 I. C. C. 49.

Consideration should further be given in determining the reasonableness of the rates, Wichita versus Kansas City, to the density of traffic moving over sections of the road on which those points are located. In 1918 the density of traffic between Wichita and Springfield was 840,000 tons eastbound and 560,000 tons westbound, a total of 1,400,000 tons. Between Kansas City and Springfield it was 1,620,000 tons eastbound and 800,000 tons westbound, a total of 2,420,000 tons. During 1919, between Kansas City and Springfield it was 4,366,000 tons eastbound and 2,450,000 tons westbound, a total of 6,816,000 tons. Between Wichita and Springfield it was 3,840,000 tons eastbound and 2,400,000 tons westbound, a total of 6,240,000 tons. The density [fol. 222] improved somewhat during 1919 on the Wichita-Springfield line on account of the oil development in southern Kansas, but that is a condition we can not expect to be permanent, as the oil fields have been tapped by pipe lines and there has already been a perceptible decrease in the density movement. The movement now is nearly all outbound products.

From Kansas City or Wichita to Memphis and Mississippi Valley points like Baton Rouge and New Orleans we furnish shippers of horses and mules with free transportation in both directions, but since December 10th the return transportation has been eliminated in the case of any Arkansas, Texas, or Louisiana business that is covered by Leland's tariff issues. Between Wichita and Memphis the round trip fare is $37.04 against $31.70 between Kansas City and Memphis.

That Kansas City has to reckon with St. Louis as a competitor at Memphis and beyond, and that St. Louis must therefore be considered a competitor of Wichita also, is evidenced from the fact that the rate from St. Louis to Memphis is $62.50 per car up to 40 feet in length, whereas from Kansas City the rate is $81.00 per car of 36 feet and 6 inches, and for a 40 foot car the rate would be in the neighborhood of $90.00.

What I have said with regard to the movement to Memphis applies with equal force to New Orleans and Baton Rouge, except that on shipments moving to those points

from Kansas City there is necessary one stop for feeding and rest, while from Wichita two stops must be made, and the value of transportation furnished the shippers is from Wichita to Baton Rouge $53.00, from Wichita [Kansas City?] $55.00, and to New Orleans from Kansas City it is $57.25, and from Wichita $56.75. I have used the complain- [fol. 223] ants' short-line figure of 844 miles from Wichita to New Orleans, whereas the distance by way of Memphis is 863 miles.

On shipments of horses and mules from either Wichita or Kansas City to Little Rock the transportation features, so far as time is concerned, are substantially the same, because in both cases the runs are not made without a stop in transit for feed and rest and the cost of transportation furnished free to shippers one way to Little Rock is $15.92 from Kansas City and $16.09 from Wichita. As to the statement made yesterday that a caretaker very seldom accompanies horses and mules, I have no information to the contrary, but the provision for caretakers is a matter of importance because they will take out the contract and they may elect not to travel with the stock. When we issue a contract we don't know whether they are going to travel with the stock or not. The transportation issued is printed on the contract, and doubtless they frequently elect to take the passenger train; for example, from Kansas City to Memphis, going to Birmingham or New Orleans, they will take our night train to Memphis and beat the stock there. Having these contracts, which are good for return passage, they come to the market on the contract free of expense. If they do not use them as attendants going down, that throws that much more risk upon the carriers to see that the horses are taken care of, but the principal reason why most of these horse and mule buyers want the contract is so they can come back to the market on free return transportation and buy another load of horses.

There is another factor which is bound to continue to the disadvantage of Wichita as compared with St. Louis, Kansas City, Springfield, and Ft. Scott. As the horse and mule shipments are almost invariably purchased on the day of shipment, it is evident that if the purchaser can [fol. 224] board the train at Memphis and be in Kansas City or St. Louis early the next morning, which he can, that enables him to buy his stock and load and ship it out the

same day, which does much to influence him to buy on those markets rather than at Wichita, which requires fully twelve hours longer for his trip, plus the 24 hours longer time the stock takes to reach Memphis.

The complaint shows that New Orleans is one of the competitive points, but evidently the requirements are being supplied from some other point than Kansas City, because our records show that during the two years of 1918 and 1919, while there was a movement of 84 cars from Kansas City to Baton Rouge, only 14 cars were shipped to New Orleans via the Frisco. The record for Wichita does not show any movement to New Orleans during those two years. There was a movement of 17 cars in 1919 from Wichita to Havana by way of New Orleans, the rate to Havana basing on the New Orleans combination and in 1918 there were 24 cars from Wichita to Havana via New Orleans, but during those two years the Frisco had no shipments from Kansas City to Havana.

An article which appeared in the St. Louis Globe Democrat on January 14th states that a carload of 20 mules was sold the day before at the Union Stock Yards, East St. Louis, for $380.00 a head, the highest price ever paid for that number in one shipment. The previous high priced market for a carload of mules was $375.00, the mules having been received in both instances from the same shipper. I also have a clipping from the Wichita Eagle of January 15th which states that horses and mules sold on the Wichita market are being shipped to Sargossa, Spain, and that these foreign purchases added to the unusually large demand for mules on southern plantations, have contributed to bring [fol. 225] the Wichita market into particular prominence. Several traders say the Wichita horse and mule market at the present time is surpassed by no market this side of St. Louis. The article concludes with the statement that the prices paid run from $475.00 to $650.00 a team for mules while horses are selling all the way up to $545 a team.

As horses and mules load to a minimum of 20 head per car, the St. Louis price quoted above makes the value of a car of mules about $7,600.00, or four times the value of a car of corn at the present time and three times the value of a car of wheat on the basis of the guaranteed price of $2.20 per bushel. The exhibits which I am introducing tend

to show not only that the relation of the rates, especially those proposed, Wichita versus Kansas City, is reasonable, but that the rates in effect to-day from Kansas City are unduly low and do not afford sufficient compensation for the service performed.

I am somewhat surprised at the development of the Wichita market, as the records I have received here show that, while Wichita shipped in 1918 a total of 250 cars of horses and mules in all directions, they shipped 481 cars in 1919, which indicates that the rate adjustment has not had much effect on retarding its growth. During the same period St. Louis gained 20 per cent, according to the printed statement I have of their shipments, and I find that at Kansas City they fell off 40,000 head from 1917 to 1918.

Sheet 1 of my Exhibit 1 is a statement of rates between Wichita and Kansas City, on the one hand and Memphis, on the other, on horses and mules and on commodities which do move. This is introduced to show the very low earnings we are receiving on horses and mules as compared with earnings on commodities that in every case have a lower value. I have shown that the Wichita distance is 114 per [fol. 226] cent of the Kansas City distance, and in the last column it will be observed that the rates, Wichita versus Kansas City, run from 140 per cent on horses and mules to 264 per cent in the case of the bag and burlap rates. In the last line of the first block I have shown that, when we change our horse and mule rates from Kansas City and Memphis, the Wichita rate will be 124 per cent of the Kansas City rate. Even on lumber, which is generally considered a low rated commodity, the Wichita rate is 122 per cent of the Kansas City rate.

Sheet 2 contains the same information so far as New Orleans and Baton Rouge are concerned. The proposed new rate to New Orleans is shown at the bottom. Simultaneously with the proposed advance from Kansas City to Memphis we propose to advance correspondingly the rates to points south like Helena, Baton Rouge, and New Orleans, so that the rate from Kansas City to Baton Rouge and New Orleans will be advanced from $125.00 to $132.00. Should we decide, in place of making the rate from Wichita to Baton Rouge and New Orleans on the Memphis basis, as

they are made to-day, to carry from Wichita the same differential over Kansas City that we will carry when the new adjustments are made, namely, $21.50 a car, it will make the rate from Wichita to New Orleans and Baton Rouge $153.50 instead of $176.50 as it is to-day. It will be observed that while the percentage of Wichita mileage to the Kansas City mileage both to New Orleans and Baton Rouge is approximately 97 per cent the present rates range from 112 on lumber to 173 on rosin. As the Mississippi Valley territory which pays the New Orleans rate is blanketed on claims and commodities as far north as Vicksburg, our rate on horses and mules is a little less, I think, to Vicksburg than to New Orleans, but these proposed adjustments will be reflected back as far north as Natchez. [fol. 227] Sheet 3 gives the same information as to Little Rock and shows that, while the mileage percentage of Wichita is 94 per cent of Kansas City, the percentage of rates ranges from 140 to 206, which shows that the level of rates on classes and commodities between Wichita and Little Rock is much higher than between Kansas City and Little Rock. When the rate from Wichita to Memphis is reduced to $109.50, the present rate of $114.00 from Wichita to Little Rock will automatically be reduced to $109.50.

Sheet 4 of Exhibit 1 shows a comparison of the earnings on horses and mules from various markets, such as Wichita, Kansas City, Fort Scott, Springfield, Forth Worth and St. Louis, and it does not require much study to observe that the rates from Wichita and Kansas City for like distances are very much lower than they are from any other market. From Fort Worth to New Orleans the rate is $142.60 for a distance of 549 miles, whereas the rate on horses and mules from Wichita to Memphis for the same distance is $114.00, and it is now proposed to make it $109.50.

From Kansas City to points in Ohio and Pennsylvania, where it is admitted that the rate level is lower than elsewhere, it will be noted that from Kansas City to Pittsburgh, a distance of 890 miles, which is equal to or comparable to the distance from Kansas City and Wichita to New Orleans, the rate is $239.30, as compared with $132.00 proposed from Kansas City to New Orleans and about $155.00 from Wichita. The distance from St. Louis to Pittsburgh or Cleveland is 535 miles, or 14 miles less than from Wichita to Memphis, whereas the rate is $152.90 against $114.00

from Wichita to Memphis. The rate of $156.25 per car from Kansas City to Montgomery, 830 miles, approximately the distance from Wichita to New Orleans, was [fol. 228] declared not unreasonable in the complaint of August Wilke, 50 I. C. C. 73. The rate of $95.00 authorized by Freight Rate Authority No. 7330 on December 6, 1919, on horses and mules between points on the Minneapolis and St. Louis Railway and in South Dakota for 400 miles is much higher than the rate now in effect from Kansas City to Memphis and also than the one which is proposed.

Mr. Huston testified that the empty stock car movement from Wichita is southbound, and while that might be true for some lines it is not true of the Frisco, as we have lost a great deal of business in the last two years out of here for points in our territory because we were not able to furnish cars, and the statement of the movement from here for the last two years shows that the Santa Fe hauled about 116 cars of horses and mules from here to the Southeast because we could not provide the cars for it. If Mr. Huston's testimony that the rate on horses and mules from Wichita to Springfield is the same as from Kansas City to Springfield is correct, the reason for that is that at the instance of Wichita and Springfield we have from time to time put into effect commodity rates on furniture, crackers, candy, and articles manufactured either at Springfield or Wichita that would permit one to ship to the other, and that has probably developed into putting the Kansas City rate basis on all classes of goods and commodities into Springfield from Wichita. On the Frisco map, which I hereby identify as Exhibit 2, you will find a pencil line that I have drawn from Kansas City south to Rich Hill, Lamar and Carthage, Missouri, which defines the eastern boundary of the territory to which rates from the west, like Wichita, are made the same as from Kansas City but, as just stated, as a concession to those communities we have extended that line for the benefit of Wichita and Springfield so as to include Springfield.

[fol. 229] Mr. Huston in his testimony also dwelt upon the fact that the Kansas City rate is applied from points north to St. Joseph, a distance of about 65 miles further, but he did not add that it is applied from stations 100 miles south of Kansas City, such as Ft. Scott, from which the distance to Memphis is 326 miles, or 106 miles less than

from St. Joseph. I think it also applies as far as Lamar, which is 40 miles further east, from where it begins to grade down at Lockwood, a good horse and mule shipping point, and at Springfield the rate is $75.50 per car for 287 miles. The rate also applies from Columbus, Kans., for a distance of 395 miles. That is a constituted group on northbound business from Memphis to Kansas City, where the Kansas City rate of course applies as a maximum, but the maximum begins at Ft. Scott or a few miles east.

In using the cattle rates as the basis for his calculations in his Exhibit 7, Mr. Huston has not shown that in 47 I. C. C. 320 the Commission made a ruling that on horses and mules the rates should be 120 per cent of the beef cattle rates. And in 27 I. C. C., I haven't the page number, they comment on the fact that the rates on horses and mules generally range from 115 to 120 per cent of the cattle rates, but that was between territory not involved here, Kansas City and Chicago, I think.

The rate of $93.50 per car from Wichita to Ft. Smith via the Midland Valley shown in Exhibit 7 is not the correct rate via the Frisco. The Frisco rate from Wichita to Ft. Smith is $62.50, as carried in St. L. & S. F. tariff I. C. C. 7432.

(Defendants' Exhibits 1 and 2, witness Dunbeck, were duly received in evidence.)

[fol. 230] Cross-examination.

By Mr. Huston:

I am not familiar with transportation conditions, except we do know that the cost of operating the railroads has very greatly increased since 1915, when the Western Rate Advance case, 35 I. C. C. 497, was decided. I do not know what reference was made therein to the rates on horses and mules. I am speaking for the railroads and not the Director General with regard to the proposal to increase the rate from Kansas City to Memphis. The through train service from Kansas City to Memphis was arranged to meet the competition of lines operating from Kansas City through St. Louis and Ohio River gateways to the southeastern points of destination. Our Red Ball train out of Kansas City carries a full load of meats and horses and mules to Memphis and beyond, which is the reason we do not arrange

for a connection with it of the Wichita train; we can not put everything on that train. Even if we do get a release on horses and mules to a value of $150.00 per head, that makes the car worth $3,000.00, which is still in excess of the value of a car of wheat or anything.

In the Memphis-Southwestern Investigation it was left open for the carriers to increase their commodity rates from New Orleans to Kansas City, and the distances set out on sheet 2 of my Exhibit 1 shows that the rate to Wichita should be 110 per cent of Kansas City from New Orleans, which might mean substantial advances in the rates to Wichita over what they are to-day. The present rate on packing-house products from Wichita to Memphis is less than what the Commission has authorized, I think it was in 22 I. C. C. I am not competent to say why the carriers have not increased those rates to the figure the Commission authorized them to publish. The general level of rates east of the Illinois-Indiana state line is lower than [fol. 231] in Missouri, Arkansas or Louisiana, but that is not true of the rates on horses and mules. As to the rates on horses and mules from South Dakota shown on sheet 4 of my Exhibit 1, I have been in many cases where the South Dakota rates have been in issue and they seem to think the transportation conditions up there are not so dissimilar from what they are in other sections of the country, certainly not worse than in Arkansas, or Oklahoma and Texas.

B. F. E. Marsh, was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

I am the Assistant General Freight Agent of the Santa Fe Lines, located at Topeka, Kansas. My testimony will be directed particularly to the situation relating to the rates from Kansas City and Wichita to Fort Worth and other Texas points. With the possible exception of Beaumont, where I believe the Kansas City Southern carries a special rate lower than the general basis, the rate from Kansas City on horses and mules to Fort Worth and other Texas points is on a group adjustment at both the origin end and the destination end. To make a set of special rates from Wichita to Forth Worth would result in breaking up that group adjustment, as it would bring about combinations

on Fort Worth and would result in discrimination against other shipping points in Kansas City territory.

I have some comment on the Exhibits filed by Mr. Huston so far as they pertain to Texas. On sheet 5 of his Exhibit 4 he shows selected points for the purpose of exhibiting six Oklahoma points compared with the rates and mileage from Kansas City for the 300-mile block or distance, but if we take the average of Oklahoma points we get a rate of [fol. 232] $73.58, which is $2.58 per 36 foot car higher than the present $71.00 rate on horses and mules from Wichita to Thackerville, distance 299 miles. At the 300-mile block on Exhibit 6, if 120 per cent of the cattle rate were used, it would make the horse rate $90.00 for a 36-foot car instead of the figure shown in the exhibit.

The distance shown on Exhibit 8 from Wichita to Wichita Falls, Dallas, and Beaumont, Texas, is not representative of the actual condition for the reason that the rate applies from a group which includes St. Joseph, Kansas City, Springfield and other points much farther away from the Texas destinations shown in the exhibit than is Wichita. In like manner, the rate would apply from some points closer to Texas than Wichita, and also to points in Texas that are more distant than the three points shown.

On sheet 2 of Exhibit 10 the impression is conveyed that the $15.00 added to the rates in effect on June 24, 1918, was authorized under General Order 28. My understanding of General Order 28 is that, where a through commodity rate on livestock applied from origin to destination, the rate was increased 25 per cent, but not in excess of 7 cents per 100 pounds when the rate was stated in cents per 100 pounds and not in excess of $15.00 per 36 foot car when the rate was stated in dollars per car. But where class rates applied on livestock they were increased to the full 25 per cent and were not restricted to the 7-cent increase or the $15.00 increase. Prior to and since June 25, 1918, a through class rate applied on horses and mules from Wichita to North Fort Worth, and hence the above limitations did not apply.

From Wichita to Thackerville the rate was published in dollars per car, while from Thackerville to North Fort [fol. 233] Worth it was in cents per 100 pounds. Therefore, the factor from Wichita to Thackerville was increased 25 per cent under General Order 28, but not in excess of

$15.00 per 36 foot car, and the factor from Thackerville to North Fort Worth was increased the full 25 per cent without any limitations.

The percentage of the horse rates to the cattle rates shown in Exhibits 12 and 13 would be substantially increased if the minimum of 23,000 pounds were applied to the horse rate and the minimum of 22,000 pounds were applied to the cattle rate, and the percentage relation then determined.

As to the rates shown in Exhibit 14 from Kansas City to Texas stations, Higgins to Panhandle, when the line was extended south of Kiowa, Kansas, Panhandle was the terminus. Cattle were then driven long distances to shipping points, and rates were graded nominally over the southern Kansas border point in order to prevent having the cattle driven up to Kiowa and Anthony. As a result, a lower system of rates on horses and livestock generally resulted from those points, Panhandle and north, than the service warranted, and up to this day we have not got away from that early condition. The same is true of the stations shown in Exhibit 15, Coleman to Sweetwater, inclusive. Those stations are on the Panhandle and Santa Fe line after it was extended from Panhandle down to Amarillo and it acquired an independently built line which extended into the plains country several years ago, when long drives were still possible in that section.

My knowledge of the rate situation in the Southwest is that no fixed relationship has ever been observed by the carriers between cattle and horses; but in rate-making circles it has always been understood that the horse rates should be considerably higher than the cattle rates, and I [fol. 234] have just arrived in various ways at something like 125 per cent as the figure that I think would be not unreasonable on horses as against cattle rates, provided the latter were on the proper basis.

In the event reparation is awarded, our records show that, with the exceptions of cars A. T. & S. F. 57091, 54880, 54879, 57087, and 55199, in each and every case a 40 foot car was ordered. Where 36 foot cars are ordered and 40 foot cars are furnished for carrier's convenience, our tariffs provide the 36 foot car rate may be applied, but otherwise the tariff charge on 40 foot cars is proper. Also, where the value exceeded $150.00 per head a slight increase over the basic rate is provided.

My Exhibit 3 is a map on which is shown the Kansas City territory and also an outline of the Dallas-Fort Worth and the Texas common-point group. You can see that Wichita is pretty well towards the southern line of the Kansas City territory and Fort Worth is pretty well towards the northern part of the Dallas-Fort Worth group, and in determining the measure of the rates we should work on the average distances rather than by using the shortest or longest distances. The map also shows the complications which naturally result from combinations cutting through rates.

My Exhibit 4 relates to the reparation feature which I have already covered.

My Exhibit 5 shows the rates on horses and mules southbound from Kansas City territory to Texas points in comparison with the northbound rates from Texas points to Kansas City territory.

My Exhibit 6 shows that the rates from Wichita to Thackerville are on a low basis. The distance, 299 miles, takes the 300-mile block rate. Between two points in Oklahoma for that distance the rate would be $95.60 on a 36 [fol. 235] foot car of horses and mules. Between two points in Texas common-point territory the rate would be $74.75. I call particular attention to the gradation of the scale from Kansas to Oklahoma. It starts out with $7.00 per car with increases in 25-mile blocks, which fade away to $1.50 at 250 miles, 275 miles, and 300 miles, but in the next 25-mile block it jumps up to $6.50. That illustrates why the rate from Wichita to Thackerville is on a depressed basis; it is the low spot of the scale.

Exhibit 7 is self-explanatory, but it shows clearly that the average load of horses and mules does not pay its proper share of transportation charges as compared with all carload freight. It shows that it does not give us the tonnage per car anywhere near the average of other carload freight, and that we do not receive on the average as long a haul as we do on all carload freight. As rates and hauls usually go together, the carriers seek to get the long haul shipments rather than short haul shipments, especially on carloads, the theory being the longer the haul the greater the rate, and naturally the greater the revenue, while the terminal service for a short haul is substantially the same as that for the long haul.

Exhibit 8 shows there is a much greater empty movement on livestock cars as compared with the loaded movement than on box cars, and is self-explanatory. The exhibit also shows that the Santa Fe Lines paid much more on livestock claims as compared with gross earnings than it did on dead freight.

(Defendants' Exhibits 3 to 8, witness Marsh, were duly received.)

[fol. 236] Cross-examination.

By Mr. Huston:

The only explanation for the difference of $150.35 in the rate from Wichita to Gainesville, Texas, over the rate to Thackerville, Oklahoma, 12 miles distant, is that from Wichita to Thackerville that mileage scale applies and it stops at the Oklahoma-Texas line, where an entirely different set of rates applies, as explained in my direct testimony. It is not simply because it is in the tariff that way. On June 24th a certain rate applied from Wichita to Thackerville, which was increased by General Order 28. On June 24th a certain rate applied from Thackerville to Fort Worth, which also was increased by General Order 28. Those were new local rates, just as there existed the combination versus the through rate prior to June 25, 1918. On my Exhibit 7 I show the average haul on horses and mules is one figure and the average on all carload freight is another figure. I don't know what the minimum haul involved in this case would be, but I think it is more than 200 miles; the longest haul might be as much as 900 miles.

Redirect examination.

By Mr. LaCoste:

According to the yearly reports of the Wichita Stock Yards and of the Fort Worth Stock Yards, the number of horses and mules received at each market from 1913 to 1918 was as follows:

Year	Wichita	Fort Worth.
1913	6,126	56,724
1914	7,017	47,712
1915	14,472	54,640
1916	17,146	79,209
1917	19,312	115,233
1918	10,782	78,881

[fol. 237] The foregoing figures are respectively taken from a book purporting to be the Twenty Sixth Annual Livestock Report of the Wichita Union Stock Yards Company of Wichita, Kansas, and from a book which purports to be the Seventeenth Annual Report of the Fort Worth Stock Yards Company of Fort Worth, Texas. They show that Fort Worth is a considerably larger market than Wichita, and the fact that shipments have been made from Wichita to Fort Worth proves that the smaller market is enabled to ship to the larger market.

Defendants rest.

T. Y. Horton was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

I am Traffic Manager of the Wichita Union Stock Yards Company, which position I have held since January 1st of this year; prior to that time I was connected in various capacities with the Livestock Department of the Santa Fe since January 1, 1902, during which time I handled livestock claims principally. There is a certain class of claims filed on livestock, meaning cattle, hogs and sheep, that are not filed on horses and mules. They are known as market claims, by which is meant claims for missing the market where the shipments are intended to arrive on a certain day or before a certain hour of the day but are delayed and miss that market. Payments on market claims average probably 30 or 35 per cent of the total payments on livestock. I recall only one instance where a market claim was filed on horses and mules, but that claim was not paid and suit was not brought.

Complainants' Exhibit 23 is a statement showing the [fol. 238] cars of livestock received at Wichita Union Stock Yards, Wichita, Kans., for the years 1917 and 1918. The cars received from Texas would reach Wichita under load, and if there was a demand for empty cars in Texas they would be returned empty. The statement shows there is a considerable demand in Texas, but it is greater in the Spring than in any other season of the year. The Spring movement is not to market points but to the pastures, and is not reflected in Exhibit 23. The movement of cattle and hogs from Wichita to Texas is small.

(Complainants' Exhibit 23, witness Horton, was duly received in evidence.)

Cross-examination.

By Mr. LaCoste:

Exhibit 23 was intended to include all receipts at Wichita, including stock given the benefit of the market there and then sent on to Kansas City and other markets.

E. C. TEAM, recalled as a witness, further testified in substance as follows:

Direct examination.

By Mr. Huston:

As to the testimony that a large number of caretakers ride on passenger trains under benefit of the pass and do not accompany the shipments, I have never known of a case of that kind. Assuming my company handles 400 carloads of horses and mules a year, probably not more than 40 caretakers out of the 400 would accompany those shipments.

Cross-examination.

By Mr. Enoch:

As I understand it, my customers coming up to Wichita from the Southeast and South seldom have a pass unless they accompany the stock home. There is a pass for return if you accompany the stock, but there is no pass on it [fol. 239] going on a passenger train. Assuming that the caretaker would pay his fare from Wichita to the point of destination on the passenger train and not accompany the stock, it is not true that he could use the livestock contract for his return trip to Wichita unless your agent wants to sign up, because it provides for his signature on each one at the junction.

(Thereupon, at 12:40 P. M., January 16, 1920, the hearing of this matter was closed.)

[fol. 240] EXHIBIT BB

Before the Interstate Commerce Commission

Docket No. 13001

THE CHAMBER OF COMMERCE OF KANSAS CITY, MO.,
Complainant,

vs.

ALEXANDRIA AND WESTERN RAILWAY COMPANY et al.,
Defendants

Kansas City, Missouri, November 28, 1921.

Before J. A. McQuillan, Attorney-Examiner.

Met pursuant to notice.

Appearances:

(Omitted, being as recited in 89 I. C. C. 22.)

Proceedings

Exam. McQuillan: The Interstate Commerce Commission has set for hearing at this time and place Docket No. 13001, The Chamber of Commerce of Kansas City, Missouri, against the Alexandria & Western Railway Company et al.

By complaint filed July 21, 1921, it is alleged that the Class A rates in effect for the transportation of horses, mules, asses and burros, in carloads, from Kansas City, Missouri, to Texas and Oklahoma points are unreasonable, unjustly discriminatory, preferential of other points, prejudicial to Kansas City, and in excess of the combination of rates to intermediate points, in violation of Sections 1, 2, 3, and 4 of the Interstate Commerce Act.

The Commission is asked to prescribe for the future just and reasonable rates on horses, mules, asses and burros, [fol. 241] in carloads, southbound, Kansas City to Texas, not exceeding those currently in effect northbound from Texas points to Kansas City; and from Kansas City to Louisiana points on a basis related to and aligned with

such commodity rates as are now in effect from Kansas City to Shreveport, Monroe, Alexandria, and other Louisiana points.

Mr. Tedrow: In our prayer for relief we have asked for reasonable rates southbound not exceeding rates contemporaneously in effect northbound. We do not mean by that to ask specifically for the measure of the northbound rates. What we had in mind was that the southbound rates should be set at some reasonable basis, and a reasonable basis, as we see it, would be the Shreveport scale. If my petition is not plain on that point I want permission to amend it so as to make it clear.

Exam. McQuillan: The amended petition here, to amend the complaint in the matter therein set forth, will be received and made a part of this record.

J. H. Tedrow was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination (pro se).

I am Transporation Commissioner of the Chamber of Commerce of Kansas City, Missouri. In this case we are attacking the rates on horses southbound from Kansas City to Texas and rates on horses to Louisiana. My Exhibit 1, a map, illustrates the situation. The cross-hatched territory in the Panhandle and down near El Paso, in the territory between Texarkana and Shreveport, and in a little territory near Beaumont is all of the territory in Texas to which at the present time we have southbound rates on horses from Kansas City on a commodity basis. All the other rates are on the class A basis.

[fol. 242] Turning to Louisiana, the rates are checked on my large statement to the points circled. You will find that in Louisiana we have a pretty fair line-up of horse rates on the commodity basis, except to those points in the southern part of Louisiana which have the big circles around them; to those points there is nothing better than the class A basis, except where through rates to points in Texas and Louisiana can be made up on combination, but of course the through rate must apply.

My Exhibit 2 consists of 23 sheets. The first sheet shows the receipts and shipments of horses and mules at Kansas City compared with Forth Worth, Texas, Atlanta, Ga., St.

Joseph, Mo., Wichita, Kans., and St. Louis, Mo. This goes to emphasize the importance of Kansas City as a horse and mule market, and when I say horses it will be understood I have reference to horses, mules, burros, and asses, although there is no movement of burros.

At the bottom of the sheet we show the shipments of horses into Louisiana and Texas for the years 1918 to 1921, for the 10 months ended October 30, 1921. This is to demonstrate that there is an actual movement of these animals from Kansas City into this territory in the face of the rate situation which has been so badly against us, and to demonstrate that it is an appreciable percentage of our total receipts.

The second sheet sets out the history of the rates on livestock; it shows horses, cattle, hogs, etc., but horses are all that we need to consider in this connection. Previous to November 17, 1916, class C rates applied on horses southbound into Texas and to those portions of Louisiana to which we had no through rate. Effective November 17, 1916, this basis was raised to class A. That basis has been increased to date by General Order 28 and Ex Parte 74, [fol. 243] and inasmuch as the 7-cent maximum increase did not apply in connection with the class rates where livestock moved on the class rates our southbound rates on horses, and on livestock generally where they have been on the class basis, have been inordinately increased.

Sheets 3 and 4 contain a résumé of the territory in Texas to which commodity rates apply on horses southbound from Kansas City. I have taken Leland's Tariff, I. C. C. 1379, and have shown the rates from Kansas City and St. Louis to points to which we have southbound commodity rates, which are generally named in dollars per standard car. I have also shown what the rates would be on the scale approved by the Commission in the Hudson case, 63 I. C. C. 6, as well as what the rates would be on the Shreveport scale, which I have extended beyond 750 miles, where the prescribed scale ended. In the last column I show the northbound rates. In one of the Natchez cases, 52 I. C. C. 558, the Shreveport scale was extended to apply to Natchez, except that for distances over 750 miles it was provided that the Natchez rate should not exceed the rate to Shreveport by more than 6 cents. It is about 190 miles from Shreveport to Natchez.

This statement shows that the southbound rates we now have from Kansas City are much higher than they would be if measured by the Shreveport scale, and that any basis higher than the present southbound commodity rates is certainly unreasonable in the face of the Shreveport scale. It is my contention that it is proper to apply the Shreveport scale on shipments of horses from Kansas City to Texas and Louisiana if that scale is proper to apply to the movement of horses in Texas; we want specific rates published all over Texas, and to points in Louisiana where we do not now have through rates, on a basis that would not exceed the Shreveport scale.

[fol. 244] Pages 5, 6, and 7 show the rates on horses per 36 foot car between Kansas City and points in Wyoming, Colorado, Nebraska, Oklahoma, etc. We have commodity rates on horses between Kansas City and all this territory, the adjustment into Texas and into parts of Louisiana being a departure, as we see it, from the general line-up of rates in this western territory so far as Kansas City is concerned.

Sheet 9 shows the rate on horses and the rate on beef cattle. The Shreveport scale applies between Texas points, between Texas points and Shreveport, and later was extended in the Natchez case to apply to Natchez.

On sheet 10 are shown various points in Texas, with the miles and route from Kansas City and the miles and route from Fort Worth. It shows our present rates from Kansas City, which are class A, and what our rates would be under the Shreveport scale. In figuring the earnings per car, I used a 36 foot car with a minimum of 23,000 pounds. That is the minimum observed in this territory, although for a longer car it is more than that. To illustrate, on the 23,000 pounds minimum for a 36 foot car, the 60-cent rate under the Shreveport scale would give us a carload charge of $138.00, whereas our present rate is $1.335. Fort Worth has the Shreveport scale, and the rates from Fort Worth to those Texas points are shoyn in the right-hand column. Our present rate to Shreveport is $128.50 per standard car, which is not far from what it would be on the Shreveport scale, to wit, $133.40.

Sheets 11 and 12 take points in Texas to which there are no commodity rates, that is, where the class A rates apply southbound. We show the northbound commodity rates

and the Shreveport scale. For instance, to Corsicana our [fol. 245] southbound rate is $1.335, making our minimum carload charge $307.00. We have a northbound rate of 87 cents, giving us a minimum carload rate of $200.00. The Shreveport scale would give us a carload charge of $129.95.

Sheets 13 and 14 contain a résumé of the rate situation as to Louisiana. We have generally a line-up of commodity rates to Louisiana points except in the south, and our commodity rates to Louisiana are also greatly augmented by the spread back of the New Orleans rate as a maximum. We further show on this statement the Shreveport and the Hudson case scales.

Sheets 15 to 18 present a comparison of rates on horses to Texas points from Kansas City with the rates applying on horses between Kansas City and equidistant points in Colorado, Nebraska, Wyoming, etc., also what the rates would be under the Shreveport scale. Thus, to San Antonio, Texas, a distance of 787 miles, we have to pay $307.00 a car, but between Kansas City and Deadwood, South Dakota, we have a rate of $139.00. The extended Shreveport scale would give to San Antonio $152.00. In Texas the same rate applies under the Shreveport scale from 750 to 1500 miles, but I have extended the scale beyond 750 miles in 50-mile blocks at the same rate of progression as that in the last block below 750 miles. This exhibit certainly shows that the rates the railroads have been charging for the movement of horses from Kansas City to Texas points are excessive and unreasonable.

Sheets 19 and 20 contain a similar comparison with reference to Louisiana and the same thing is generally true. On both this statement and the preceding statement, when we consider the Shreveport scale it will be found to be a little higher than the rates on horses applying between Kansas City and these various points in Nebraska, Wyoming, etc., so that the application of the Shreveport scale [fol. 246] into this territory would give a somewhat higher basis of rates than is in effect between Kansas City and the western territory. This exhibit certainly shows that the present rates we have to Louisiana are not low or depressed. It also shows that, taking Louisiana as a whole, no great amount of change probably would be made were the Shreveport scale applied from Kansas City to the whole of Louisiana. For instance, we now have a rate of

$169.00 to New Orleans, which would become a minimum of $170.00 by use of the extended Shreveport scale.

Sheet 21 shows the rates on horses and beef cattle from New Mexico and Arizona points to Los Angeles as compared with rates from Kansas City to Texas points for similar distances. The rates on beef cattle from these New Mexico and Arizona points to Los Angeles were set by the Commission in 26 I. C. C. 37 and reaffirmed in 32 I. C. C. 515, American National Livestock Association versus Southern Pacific. For instance, from Lordsburg, New Mexico, to Los Angeles, 663 miles, the carload rate on horses is $196.00, while we pay $307.00 for practically the same distance from Kansas City to Bryan, Texas. Likewise, the class A rate of $1.83 from Lordsburg is 49.5 cents higher than the class A rate from Kansas City to Bryan, Texas.

Sheet 22 shows how the through rates on horses from Kansas City to points in eastern Texas can be beaten by the combination on Shreveport. For instance, we have a through rate from Kansas City to Fort Worth of $279.50, but you can beat that rate by using the Kansas City rate to Shreveport plus the rate from Shreveport to Fort Worth, making a combination of $218.00. To Houston, Texas, the through rate of $307.00 can be beaten by the combination on Shreveport of $221.50.

[fol. 247] Sheet 23 shows how the through rates to points in the southern part of Louisiana to which we have no through rates, and on which the class A rates apply can be beaten by combinations. Thus, the through rate of $271.50 per car we have figured to Opelousas can be beaten by a combination rate of $209.00 based on Eunice; and the through rate of $234.00 to Thibodaux can be beaten by a combination of $204.50 on Shriever.

My Exhibit 3 is a copy of an exhibit introduced in the Hudson case, as shown in the caption. It relates to the loss and damage involved in the transportation of horses and mules, and shows, for example, that out of nearly 40,000 head of horses and mules transported the number of animals damaged totaled 67. And out of a total amount of freight paid of nearly $200,000 the amount of claims paid on that traffic amounted to just a little less than $3,000.00, which goes to show, as we contend, that the amount of loss and damage involved in the movement of this traffic is not

of sufficient importance to have any great bearing upon the freight rate controversy.

(Exhibits 1 to 3, witness Tedrow, were duly received in evidence.)

No cross-examination.

JAMES M. PIPER was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

[fol. 248] Direct examination.

By Mr. Tedrow:

I am President of the firm of Piper Brothers and Secretary and Treasurer of the firm of Sweet & Piper. Sweet and Piper are in the commission business and Piper Brothers in the wholesale and retail business. Our trade from Kansas City is all through the eastern and central and southwestern part of Texas, roughly speaking, east of a line running from the north to Fort Worth and thence through San Antonio in a southwesterly direction. In that territory there is a large demand for horses and mules which this market has to supply, and that is also true of the State of Louisiana. From this part of the country this market has enjoyed a considerable trade in the past in Louisiana and in part of Texas. Important horse markets are also located at Fort Worth, St. Louis, and Memphis, and we meet the competition of those markets in selling and shipping horses and mules to Louisiana and Texas. In getting into this Texas and Louisiana territory we feel the necessity of having a line of rates related to or aligned with the rates from those competing markets.

About three weeks ago I made a visit down there in Texas and never met a man who did not say he would be glad to trade and had been trading in Kansas City, but that our rate was absolutely prohibitive. I sold a man a load of mules at Greenville, Texas, and the rate down there cost him $310.00, but he knows he could ship this stuff 250 miles further on to Shreveport for $160.00. He said we would have to get this rate changed before he could come to Kansas City to trade, and he would have to go to Fort Worth. I

called on some 25 people and everyone of them told me the same thing. Mr. Stewart, from Waco, Texas, says he is [fol. 249] very warm towards Kansas City but that he could get his stuff from Fort Worth at from $7.50 to $15.00 a car, and that he had to meet the competition. He says that it fixed it so that he absolutely could not come to Kansas City and pay the $307.00 a car and expenses.

Since the advent of the 25 per cent and 35 per cent advances in freight charges, our business has been absolutely ruined. Prior to 1916, when our southbound rates on horses into Louisiana and Texas were on the class C basis, we did not have the difficulty getting into Louisiana and Texas that we have had since. Take Franklin, Louisiana, which is about 100 miles this side of New Orleans; we have a barn there, and it cost us $300.00 to ship a load of mules to Franklin awhile back. I anticipate that the continuation of this rate situation will further restrict our business in the future.

The first sheet of Exhibit 4, consisting of two sheets, shows the average value of the horses and mules handled by my firm in the months of October and November, 1919, to 1921, and the second sheet shows claims for loss or damage filed and collected by my firm for the year February 1, 1920, to February, 1921. This statement was taken from our books and was prepared under my direction. It shows a tremendous falling off in the price of horses in 1921 under 1919, and that during the period of a year shown on the second sheet my firm filed three claims and collected on those claims a total of $279.38. In 1919 and 1920 the business done by my firm amounted to about $3,000,000.

(Exhibit 4, witness Piper, was duly received in evidence.)

[fol. 250] Cross-examination.

By Mr. Andrews:

The barn at Franklin, Louisiana, about which I testified, is maintained for the purpose of selling and distributing mules to the farmers down there. We purchase our mules on the Kansas City market. The principal production of mules is in Kansas, Missouri, Nebraska, and Illinois; very few are produced in Texas, and practically none in Louisiana. As I testified; there is a market at Fort Worth and

Memphis; there is also a wholesale market at New Orleans and a retail market at Shreveport, and we compete with all those markets in that territory and have to meet their competition. I think we ought to have the New Orleans rate of $169.00 to Franklin. I am familiar with the rates only in a general way and do not know what basis of rates our competitors at Fort Worth and Memphis and those other places pay. The market for mules has declined a great deal in the last year, cut half in two. Before that decline took place we experienced difficulty in reaching the markets in eastern Texas and Louisiana. Both in the past as well as at present we disposed of the big part of our mules in Louisiana and Mississippi. I suppose about 65 to 75 per cent of my firm's business was in Louisiana and Texas.

Re-direct examination.

By Mr. Tedrow:

The horses and mules that we sell and ship down into Louisiana and Texas are bought by the dealers in that territory, but they are ultimately disposed of to the farmers. When we ship mules into that territory, I suppose the freight rate serves to increase the price above what it would [fol. 251] be if they moved on a reasonable rate. The farmer is the one who pays the bill, and of late, on account of general conditions, cotton being off, and so forth, lots of them are broke.

Re-cross examination.

By Mr. Andrews:

We usually load about 24 head of mules in a car on an average, and a carload charge of $307.00 would be about $12.00 a head. That is a serious disadvantage. We used to ship mules to Marlin for $75.00 a car and to-day it costs us $335.00, and the mules were no higher than they are to-day to the farmers in that district. I know of no north-bound movement of horses and mules from that territory.

Frank H. Sweet was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination.

By Mr. Tedrow:

I am President of the firm of Sweet and Piper, which is engaged in the horse and mule commission business at Kansas City, Missouri, selling and shipping horses and mules to various territories, including Texas and Louisiana. I have heard and concur in a general way in the testimony of Mr. Piper. I regarded Texas and Louisiana as an important territory in which to sell our horses and mules. All I have to add to Mr. Piper's testimony is that our business has greatly decreased since these rates have increased and we can attribute it to no other cause. In the last five years, since the rates to that territory were initially increased in 1916, I have observed an increased difficulty in getting into that section; before that time, in 1916, our [fol. 252] horses and mules moved to Texas and Louisiana freely without any particular complaint as to the rates.

Exhibit 5 shows a comparison of the prices on horses and mules for November, 1919 and 1921. Exhibit 6 shows the amount of claims filed by Sweet and Piper from June, 1919, to June, 1920. Exhibit 7 is a statement of gross sales and freight charges of the Sweet & Piper Horse Company for the year ended July 1, 1920. These statements were prepared under my direction and cover both horses and mules. There was a tremendous falling off under November, 1919, as to November, 1920 and 1921. Exhibit 6 shows a total of a little less than $1300.00 claims filed by my company as compared with total freight charges paid by it of $131,000.00, as shown on Exhibit 7. These were all strictly civilian purchases and do not represent any sales made under the War Department.

(Exhibits 5 to 7, witness Sweet, were duly received in evidence.)

Cross-examination.

By Mr. Andrews:

We draw our supply of mules from the same territory that Mr. Piper's company does, principally north and west and east of Kansas City; I think our competitors draw a great many of their mules from Oklahoma and northern

Texas. The decline in the market for mules first became noticeable about 18 months or less than two years ago; that was the beginning of the general decline in which everything has become cheaper, and that was one of the contributing causes for the decline of mules.

GEORGE S. STROUD was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

[fol. 253] Direct examination.

By Mr. Tedrow:

I am a partner in the firm of Nicoll & Stroud, which is engaged in the business of buying and selling mules. I have been in that business in the Kansas City market since 1915 or 1916, but Mr. Nicoll has been here some twenty odd years. I have heard and concur in the testimony of Mr. Sweet and Mr. Piper as to the general conditions. Exhibit 8, which was prepared under my direction, shows a tremendous falling off in the price of mules in 1920 under 1919; for 1919 and 1920 we took that off the invoice for December, and for 1921 we took it for November, as December is not here yet. I did not file any claims for loss and damage on horses and mules for the period from August 1, 1919, to August 1, 1920; during that period we sold $1,274,000.00 worth of mules and paid $11,100.00 freight.

The freight rates make a considerable difference in selling horses and mules when you come to consider other markets. It is impossible to sell mules when the freight is so high that men cannot get them here but can get them at other places much cheaper. St. Louis has a better rate than we have to this Louisiana territory. Fort Worth is an important market, because if you can ship horses and mules for $5.00 and another man has to pay $10.00 or $12.00, why, we consider $5.00 a reasonable profit on a mule. I have been in the business all my life and there have been very few years in which I ever made $5.00 net during the year; of course, the last few years we have had a pretty good trade and go over that.

(Exhibit 8, witness Stroud, was duly received in evidence.)

[fol. 254] Cross-examination.

By Mr. Andrews:

In speaking of the rates from St. Louis to Louisiana, New Orleans is what I had in mind. When I lived in Nashville, Tenn., I used to sell the Hudson brothers a great many mules, and after I came here I tried to bring their trade with me but did not do it. He says the freight is against me, and we haven't sold him one load. Nashville is much nearer to New Orleans than Kansas City, but he has the freight rate out of Kansas City [Nashville?], as I remember it, of $85.00. I think the rate should have some relation to the distance.

DANIEL H. ROBERTSON was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination.

By Mr. Tedrow:

I do business under the name of D. H. Robertson & Company, and am engaged in buying and selling and receiving and shipping horses and mules in the Kansas City market and have been so engaged for 25 years. Exhibit 9 shows the average value of mules handled by D. H. Robertson and Company for September and October, 1919, 1920, and 1921, and was prepared under my direction. I did not file any loss and damage claims during the year 1920. I heard the testimony of the witnesses who have preceded me and concur generally in their statements. If we had reasonable freight rates I think our business would go on as it has in the past, but as it is to-day it is cut more than half in two. I usually sell half my output in Texas, Louisiana, and Mississippi. We are not shut out of the Texas and Louisiana markets, but we are doing very little business in that country. I sold some mules this week going to Tourney, [fol. 255] Louisiana. I used to ship there and they cost me $91.00 a car freight charges, but I think this shipment will cost me about $240.00. Louisiana and Texas is the principal market for mules now, but we are shipping very few

down there; we are just not selling as many as we did; this is because of the freight rate adjustment. On account of the 25 per cent and the 35 per cent increases, I do not consider the freight outbound from Kansas City is normally reasonable to points other than those in Louisiana and Texas.

(Exhibit 9, witness Robertson, was duly received in evidence.)

MAX STUDNA was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination.

By Mr. Tedrow:

I am engaged in the horse and mule business as the proprietor of the firm of Studna and Sons. During 1920 I bought 3,346 head of horses and mules from Sweet & Piper for $336,029.75, and have also bought horses from St. Joseph, Omaha, and Grand Island. The volume of business I am now doing is simply cut down about to nothing; my trade is not high-class trade and the people cannot afford to pay freight on it as they used to. I used to ship to San Antonio, Texas, but the stock is too cheap to pay over $300.00 or $350.00 freight charges with feed. We used to ship a lot of stock to Burnett & Young at Fort Worth, Texas, but I cannot make it now, the freight is too high. In Tennessee and Mississippi, they just quit ordering on account of the freight. You buy a cheap little horse for $25.00 or $30.00 and it costs you $15.00 to get him there. As to the Texas and Louisiana territory, you just cannot get down there on account of the freight rate adjustment. The rate is where they just cannot stand the expense.

[fol. 256] (Exhibit 10, identified by witness Tedrow as a statement of value compiled from the exhibits presented by the preceding witnesses, and Exhibit 11, identified by witness Tedrow as a statement showing the percentage that the freight rate bears to the value of the livestock down to date, were thereupon duly received in evidence.)

Complainant rests.

GEORGE D. WALP was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination.

By Mr. Andrews:

I am and have been for over twenty years connected with the Traffic Department of the Santa Fe at Topeka, Kansas. Exhibit 12 was prepared by me and is largely self-explanatory. It covers the *the* rates as per the tariffs named on the last sheet, as also the combination rates on Thackerville, Oklahoma. The southbound rates are in the column marked AA and those in the column marked BB are the proposed rates which the carriers are willing to recommend. The CC column shows the combination rates to Thackerville, Okla., the southermost point on the Santa Fe in Oklahoma. The northbound rates are shown in column DD.

(Exhibit 12, witness Walp, was thereupon duly received in evidence.)

Cross-examination.

By Mr. Tedrow:

These proposed rates are shown to only three Texas points, Fort Worth, Houston, and Beaumont, and are [fol. 257] simply offered to the Commission as a basis. The rate of $198.65 which we suggest to Fort Worth is also suggested at Shreveport. I am not prepared to say how the rates we propose compare with the Shreveport scale rates.

R. C. TROVILLION was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination.

By Mr. Andrews:

I am Assistant General Freight Agent of the Missouri, Kansas and Texas Railway Company, St. Louis, Mo. The question of the rates from the Missouri River has been before the carriers for some time, the whole pivotal point is Shreveport, and in making the tentative figures which

Mr. Walp put in his exhibit they were based in connection with the proposal to advance the Shreveport rate from $128.50 to $198.65 for a 36 foot car. The Louisiana lines and the Texas lines are not in full accord as to what the rates should be, but the Louisiana lines are not here to-day, and I want to say that I am not prepared to go into this situation in detail. I feel it is due the complainant and the Commission for us to try here to make a statement in this case, however, and I want it understood that I am not testifying for the absentees.

With regard to those horse rates, the Louisiana lines are in the position that they have not yet published the proposed rates from St. Louis and the Mississippi River crossings in re-aligning the rates pursuant to I. & S. Docket No. 1303, the decision in which was received by the carriers only last Friday or Saturday. Also, when complications arose in the Hudson Mule case, 63 I. C. C. 6, in connection with I. & S. Docket No. 1303, its effective date was postponed until January 1, 1922. The situation is also affected by the decision in I. C. C. docket No. 11018, 60 I. C. C. 536, [fol. 258] the complaint of the Wichita Board of Commerce, which involved the rates on horses and mules from Wichita, Kansas, to points in Arkansas, Louisiana, and Texas, as well as to Memphis, Tenn., and the relation thereof to the rates from Kansas City.

As to whether there should be some reduction in the assailed rates from Kansas City, as far as the M., K. & T. is concerned I am in accord with the proposal presented by Mr. Walp to publish $198.65 a car to Fort Worth and to use that as a basis for working out our rates to points in that general territory. To Beaumont and Houston he suggested $218.20, which is also agreeable to me for account of the M., K. & T. As I say, though, those figures are so mixed up with the Louisiana adjustment that one can hardly be accomplished without the other; on account of the fourth section situation through Texas into Louisiana, the rates to Louisiana from Louisiana [Kansas City?] and the Mississippi River points would have to be changed.

I am not prepared to subscribe to Mr. Tedrow's proposition that the Shreveport scale shall be the basis for the southbound rates from the Missouri River. It is at a marked variance with the northbound rates on horses and mules from Texas to the Missouri River, and I haven't had a chance to make any figures on it to see what it would do

except to note that the scale would make the rate from Fort Worth 56 cents per 100 pounds versus the northbound rate of 83.5 cents. That is representative of what it would do all over Texas. The Shreveport scale was adopted with regard to the local situation in Texas and was later extended to apply from Ruston, Louisiana, and from Natchez, Mississippi, because those points were in competition with Shreveport. There may have been other reasons, but at [fol. 259] the same time I do not know of any case where the Commission has used the Shreveport scale as a yardstick for the Missouri River.

So far as the M., K. & T. is concerned, there is no transportation condition or anything in the level of the southbound rates on horses and mules which would have any effect on the northbound rates between Texas and the Missouri River. To Louisiana the rates [from St. Louis?] to such points as Shreveport and Lake Charles are exactly the same per car as from Kansas City; but to New Orleans, which I do not think is involved here, the rate is about $10.00 per car higher from Kansas City, I think, than from St. Louis. The class rates apply to Texas from St. Louis and Kansas City, and I think from Chicago territory and from points east. From Wichita the class rates apply and also on horses and mules from Oklahoma City, although they have a special mileage scale on cattle from Oklahoma City.

Cross-examination.

By Mr. Tedrow:

As to whether consideration was given to advancing the rate from St. Louis to Shreveport along with the contemplated rate increase from Kansas City to Shreveport, you understand those figures were not finally adopted, but we proposed to make a rate from St. Louis and Kansas City to Texarkana and Shreveport of $198.65 per car, and from Kansas City and St. Louis to Lake Charles of $218.20 per car, the present rate being $154.00 from both Kansas City and St. Louis. As I recall it, the proposed rate from St. Louis and Kansas City to Shreveport is based $25.00 per car higher than the proposed rate from St. Louis to New Orleans in the Hudson mule case. From St. Louis to New Orleans the Hudson scale makes a rate of 84 cents.

[fol. 260] Exam. McQuillan: Do you attack the rate to New Orleans?

Mr. Tedrow: We attack the rates where they are on the class A basis; that does not include New Orleans.

The Witness: As to whether a higher rate to Shreveport than to New Orleans would violate the fourth section, it possibly would create some violation, but I am not familiar enough with the situation of the Louisiana lines to say how much of the New Orleans business they might want to forego to answer your question. So far as the M., K. & T. is concerned, if we attempted to handle the Missouri River-New Orleans business we would of course have fourth section violations if we put this rate into Shreveport and handle the business via Shreveport. All lines are not in the same condition.

Exam. McQuillan: Do you know what the rate under the 1303 decision makes from St. Louis to Shreveport?

The Witness: No. As a matter of fact, I do not think the carriers ever did get in a proposed scale [on horses and mules] in that decision. They had not worked them out, they were holding off waiting to see how much relief or what they got in that decision before proposing the increase.

Mr. Tedrow: No rates on horses and mules, or any other kind of livestock, were in I. & S. 1303.

Exam. McQuillan: I think the Hudson horse case controlled the scale that would more or less supersede or take the place of the removal of the fourth section departures, if any existed, in the Mississippi Valley.

Mr. Tedrow: I do not understand that the Hudson mule case would apply to New Orleans, though.

[fol. 261] The Witness: Perhaps not, but they took that as the yardstick to increase these rates. So far as the M., K. & T. is concerned, I would say that the traffic and transportation conditions in Texas and from Texas to Natchez, Mississippi, and to Ruston, Louisiana, are much less favorable than they are between the Missouri River and Texas points. But in the Memphis-Southwestern Investigation the Commission stated that the conditions in this whole territory were very similar. I feel that the Shreveport scale is pretty low, and that because the Commission found it proper down there does not necessarily make it a scale that should properly apply to the Missouri River territory. I base that thought on the fact that our north-

bound rates have been in effect a long time without any complaint against them that I know of, and it does not appeal to me to make the rates southbound so much lower than the northbound rates. So far as this case is concerned, I am perfectly willing to have the Commission say what the rates should be or what rates are wrong. The M., K. & T., and I think all the other carriers in Kansas City, want rates published that will carry the business. The proposition to change the rates did not meet with the unanimous approval of the Louisiana lines, so the Texas lines are not prepared to offer that as a compromise scale, but it is in the record for what it is worth. I did not attend the meeting when this was considered, and my records only show that the Louisiana lines explained they have not published their proposed rates from St. Louis and Mississippi River crossings pending the decision in I. & S. 1303, besides which the effective date of the Hudson Mule case has been postponed until January 1st. I do not see any reason why the southbound commodity rates should not be held as the maxima of the northbound rates.

Defendants rest.

(Whereupon, at 5:25 o'clock P. M., November 28, 1921, the hearing of this matter was closed.)

[fol. 262] EXHIBIT CC

Before the Interstate Commerce Commission

I. & S. Docket No. 1483

Horses and Mules from Kansas City, Missouri, and Wichita, Kansas, to New Orleans, Louisiana, Memphis, Tennessee, and Other Points

Kansas City, Missouri, March 29, 1922.

Before W. H. Wagner, Examiner.
Met pursuant to notice.

Appearances: (Omitted, being as recited in 69 I. C. C. 97).

Proceedings

Exam. Wagner: The Interstate Commerce Commission has assigned for hearing at this time and place I. & S.

Docket No. 1483, Horses and Mules from Kansas City, Missouri, and Wichita, Kansas, to New Orleans, Louisiana, Memphis, Tennessee, and other points.

ROBERT N. NASH was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination.

By Mr. Roberts:

I am Assistant General Freight Agent of the St. Louis-San Francisco Railway Company, St. Louis, Missouri. The adjustment of rates on horses and mules which we are here called upon to justify was brought about by the decision in the complaint of the Wichita Board of Commerce, Docket No. 11018, 60 I. C. C. 536, decided March 1, 1921. In that [fol. 263] case the shippers at Wichita attacked the rates on horses and mules from Wichita to points in Arkansas, Louisiana, and Texas, and to Memphis, Tennessee, as unreasonable and also as unduly prejudicial to the extent they exceeded the rates from Kansas City. They also complained that some of the rates, particularly those to Texas, exceeded the combination of intermediates, but I think the Texas rates have been properly adjusted and are not affected by this proceeding.

The Commission after hearing found that the assailed rates were and are not unreasonable, but as to points in Arkansas and Louisiana they are and for the future will be unduly prejudicial to the extent that they exceed the rates contemporaneously in effect on like traffic from Kansas City to the same destinations. As to the rates to Memphis the Commission found that the rate from Wichita would be unreasonable to the extent that it exceeded the rate from Kansas City by more than $10.00 per car, plus the increase authorized under Ex Parte 74, making the current figure $13.50 per car. On account of the general rate situation in the Southwest resulting from the decision in Docket No. 9702 and the pending readjustments under suspension in I. & S. Docket No. 1303, the original effective date of the order in the Wichita case was postponed from time to time and finally became effective on January 1, 1922.

My discussion will be limited to the rates from Kansas City to Memphis and directly intermediate points on the

Frisco. In the opinion of the carriers it was clearly shown that the rate from Kansas City to Memphis of $81.00 per car for a distance of 484 miles was unreasonably low. The distance via the high line is approximately 10 miles less, but the traffic moves by the longer line. My testimony and exhibits do not include the 10 per cent reduction now in [fol. 264] effect temporarily to expire on June 30th.

The Commission found in the Wichita case that the rates from Wichita were not unreasonable, and the carriers would have been thoroughly justified in increasing the rate from Kansas City to Memphis to the prescribed differential under the existing rate from Wichita. It was not desired to create any more disturbance in the rate adjustment than necessary, and after thorough consideration, in view of the fact that the rate from Kansas City to Texarkana for approximately the same distance as from Kansas City to Memphis, and also that that was one of the rates which the Wichita people claimed brought discrimination against that point, we selected that figure as the basis for the rate from Kansas City to Memphis.

The prior rate of $95.00 per car became $128.50, pursuant to Ex Parte 74, and that is the rate we propose to establish from Kansas City to Memphis and which we are here undertaking to defend, not only as reasonable but as a subnormal rate. To give effect to the differential of $13.50 per car between Wichita and Kansas City ordered by the Commission, it was necessary to reduce the present rate to $142.00, which is also under suspension herein.

In the Wichita case the Commission found that the rates from Wichita to points in Arkansas should be the same as from Kansas City. We think that order should be amended so as to permit the rates from Wichita to points on the Frisco in Arkansas on and north of the line from Springfield, Mo., to Memphis, Tenn., to be made the same differential over Kansas City as in the case of rates to Memphis. That is because the prescribed differential is based upon the excess distance to Memphis from Wichita over Kansas City, and that same excess distance applies to all destinations on the line of the Frisco from Springfield to Memphis. [fol. 265] In making the revision proposed in the suspended tariff, we have not increased the rate from Kansas City to Memphis on traffic destined to points in the Southeast, that being mentioned particularly in Mr. Tedrow's protest as an anticipated increase. Our reason for not

making that increase in the proportional rate was the competition which exists between the markets of St. Louis and Memphis on horses and mules going to points in the Southeast, which is one of their biggest markets.

My Exhil 1 is a blueprint map showing the lines of the Frisco from Kansas City and Wichita to Memphis. I have shown on this map the present and proposed rates from Kansas City and Wichita to Memphis and directly intermediate points on the Frisco between Mammoth Springs, Arkansas, and Memphis. As the Kansas City shippers are the only ones who have protested, I have not undertaken to show all the other changes we have made but will briefly describe them. We now publish from Kansas City to Memphis a rate of $109.50 which is applied as maximum from all intermediate points north and west of Springfield, the rate from Springfield to Memphis being $102.00 per car. In making the revision we have started with a rate of $128.50 at Kansas City and extended that down to Paola, Kansas, a station 43 miles south of Kansas City on a line going to Fort Scott, and south to East Lynn, Missouri, 51 miles south of Kansas City on the direct line to Springfield.

From these points to Springfield we have undertaken to grade the rates into the $102.00 rate at Springfield. Through error of the tariff compiler the rates from Kansas City and upper Missouri River crossings were not included in the supplement published to become effective January 1, 1922, but were later published to take effect on May 1, 1922, and it is assumed the Commission will suspend the pro- [fol. 266] posed increases in the event this case is not decided prior to that date.

As will be noted from the map, the lines of the Frisco converge at Springfield and from Springfield to Memphis traffic from Wichita and Kansas City move over the same rails. The distance from Wichita to Springfield is 65 miles greater than from Kansas City to Springfield, and that fixes the uniform difference in distance, Wichita over Kansas City, to all points on the Frisco from Springfield to Memphis. However, in considering the rates from Wichita to Arkansas points the Commission dealt with the situation in a general way without considering the particular relation between the two points as to this northwestern Arkansas territory. As a result, the rate from Wichita to Bridge Junction was made the same as from Kansas City

to Bridge Junction, $128.50 a car on the proposed basis, while the rate from Wichita to Memphis is $13.50 per car higher than from Kansas City.

I have shown on the upper side of the Frisco line the present and proposed rates from Kansas City and on the lower side the present and proposed rates from Wichita. As will be seen, the present rates from Kansas City are blanketed from the first station in Arkansas to Memphis, the rate to all points being $109.50 per car, which in our opinion is another indication of the low level of the rates we carry to Memphis, it having been necessary to blanket them back a distance of 141 miles. In revising these rates, it was concluded to scale them up from the Missouri-Arkansas state line on a somewhat arbitrary basis running into the proposed rate of $128.50 at Memphis, so we have made the rate from Mammoth Springs to Bono $115.00, from Leachville to Terrell $119.00, and from Terrell on into [fol. 267] Memphis $128.50. Under the Commission's opinion it was necessary to make these rates apply also from Wichita, although we think they should be uniformly $13.50 per car higher from Wichita than from Kansas City.

At the present time the rate of $109.50 from Kansas City is applied on the line running out into Kansas to the first station east of Cherryvale. We propose to begin the revision at Columbus, Kansas, advancing the rate from Columbus to Memphis to $117.00. Then we have scaled the rate out along that line so as to run into the proposed rate of $142.00 at Wichita. The changes made from the stations on our Kansas line west of Columbus are practically all reductions except from Columbus to Cherryvale, where we increased the $109.50 rate to $117.00.

My Exhibit 2 is a statement showing the present and proposed rates from Wichita and Kansas City to the strictly intermediate points on our line, Mammoth Springs to Memphis, inclusive, together with the distances from each point.

I will undertake to present to the Commission figures to show that the proposed rate from Kansas City to Memphis is too low, first, compared with rates from Kansas City to other points north and south; second, compared with rates from other points in the Southwest into Memphis; third, compared with rates between Kansas City and other southwestern points; fourth, compared with rates on other traffic

between Kansas City and Memphis; fifth, compared with rates established by this Commission on horses and mules.

I am at a loss to explain the very low rate which has been established on horses and mules from Kansas City to Memphis. Prior to the increase under General Order 28 on June 25, 1918, the rate was $66.00 per car and that rate [fol. 268] was maintained as far back as our records show. The rate at the same time from Kansas City to Chicago was $82.50 per car. As a general proposition it had been the practice of the old Kansas City, Fort Scott & Memphis Railroad, which was opened about 1887 and taken over by the Frisco about 1901, to make the rate from Kansas City to Memphis the same as from Kansas City to Chicago. At that time the short-line distance from Kansas City to Memphis was 484 miles, as at present, and the Kansas City-Chicago distance was approximately the same, and the management of that line simply took that distance as the measure for the rates, ignoring the fact that the Chicago-Kansas City rates were operated through a territory where the traffic and transportation conditions were vastly more favorable. To-day, however, since the short line of the Santa Fe was opened about 1888, the short-line distance between Kansas City and Chicago is 454 miles, or 30 miles less than from Kansas City to Memphis.

My Exhibit 3 is a statement showing the rates from Kansas City to Chicago and Memphis. As already stated, prior to June 25, 1918, the rate from Kansas City to Chicago was $82.50, which paid 18.1 cents per car-mile, while the rate from Kansas City to Memphis was $66.00, paying 13.6 cents per car-mile. By General Order No. 28 both rates were advanced $15.00 per car, making the Kansas City-Chicago rate $97.50, paying 21.5 cents, and the Kansas City-Memphis rate $81.00, paying 16.7 cents. We are to-day proposing a rate from Kansas City to Memphis $3.00 per car less than the current Kansas City-Chicago rate with the Ex Parte 74 increase added, although the distance is 30 miles greater.

On page 532 of its report in Docket No. 9702, the Memphis-Southwestern Case, 55 I. C. C. 515, the Commission says that insuperable difficulties would be encountered if it were attempted to apply the Natchez scale in the terri- [fol. 269] tory lying north, generally speaking, of a line drawn east and west through Kansas City and St. Louis, for the reason that transportation conditions in that terri-

tory are decidedly more favorable than in the region to the south.

The Commission further considered in the same report, on pages 558 and 559, the application of the carriers for an increase in the class rates from Kansas City to Memphis. The carriers asked authority to increase the class rates to the full amount of the scale authorized therein, but the Commission did not approve that increase, saying that, to increase those rates upon a basis of 80 cents first-class to a basis of $1.17 without any changes in the rates from St. Louis and Chicago would do undue violence to a long-standing relative adjustment, and on the other hand to deny any increase in the rates between Memphis and Kansas City would be in effect to disregard the evidence of record with respect to the less favorable transportation conditions along the direct Memphis-Missouri River routes such as the Frisco and the Missouri Pacific. That case was most bitterly contacted, particularly by the Missouri River shippers, who opposed any increase from Kansas City to Memphis, but the Commission very emphatically found that the rate from Kansas City to Memphis should be higher than from Kansas City to Chicago, yet we have here a rate which is much lower than the Kansas City-Chicago rate, and which the Kansas City shippers are objecting to our increasing even to a basis still $3.00 per car less than the Kansas City-Chicago rate.

The car-mile earnings on the proposed rate from Kansas City to Memphis are $26.55 as compared with the car-mile revenue of 28.23 on the rate of $78.20 per car from Kansas City to St. Louis and car-mile earnings of 27.31 cents on [fol 270] the rate of $83.50 from St. Louis to Memphis for a distance of 305 miles. Both from Kansas City to St. Louis and from St. Louis to Memphis the traffic and transportation conditions generally produce a lower level of rates than from Kansas City to Memphis, but here we have rates which pay considerably higher revenue per car-mile than we propose to establish from Kansas City to Memphis.

Between Kansas City and St. Louis and also between St. Louis and Memphis there are low-grade river routes, and I think the Commission has always recognized the fact that the rates between Kansas City and St. Louis are low because of intense railroad competition, and further that all the rates from St. Louis to Memphis are subnormal. And I might add that the rates on livestock have not been

increased under the decision in I. & S. Docket No. 1303, which becomes effective April 1st, and when that is done the rate from St. Louis to Memphis will undoubtedly be higher than the present figure. On this point, the route of the Frisco between Kansas City and Memphis skirts the Ozark Mountains, and there are some very steep grades and difficult operating conditions on the line between Springfield and Memphis.

My Exhibit 4 contains a comparison of the proposed rates from Kansas City to Memphis with rates from Kansas City to other points of destination approximating the same distance. I have first taken a point directly north of Kansas City, beginning with Elkton, S. D., and I have then taken points of approximately the same distance, working east through Minnesota into Illinois and over into Indiana. The relation I have pointed out between traffic and transportation conditions in the territory between Kansas City and Chicago and the territory between Kansas City and Memphis will include all the territory represented in this [fol. 271] exhibit. In C. F. A. territory, we have a rate of $221.50 per car to Terre Haute, Indiana, 447 miles, paying 49.55 cents per car-mile, compared with 26.55 on the proposed rate from Kansas City to Memphis.

In this particular exhibit C. F. A. territory represents somewhat the level of rates from Kansas City and St. Louis into C. F. A. territory. It is based on Mississippi River combination, using the low rate from Kansas City to St. Louis added to the published rates from St. Louis to points in C. F. A. territory. There is a substantial movement of horses and mules, being generally the heavy draft horses being used in the larger cities, and the mules being mostly what we call pit mules for use in the coal mine territory, and these horses and mules move at the rates indicated by this exhibit.

My Exhibit 5 contains a comparison of the proposed rates on horses and mules from Kansas City to Memphis with the rates from other southwestern shipping points for approximately the same and greater distances, covering practically the entire states of Texas and Oklahoma. The exhibit clearly shows that the Kansas City-Memphis rate is on a much lower level than rates throughout southwestern territory. From McAlester, Okalhoma, to Kansas City, for a shorter distance by more than 100 miles, the rate is $148.50 as contrasted with the proposed rate of

$128.50 from Kansas City to Memphis. I know very little about the movement on these rates from Texas and Oklahoma to Memphis, but Fort Worth is one of the largest horse and mule markets in the country and the Southeast is a large consuming territory, so it is reasonable to assume that there will be a movement from Texas points on these [fol. 272] Texas rates. It will be noted that the Texas rates pay considerably higher earnings per car-mile, being 35.58 cents from Fort Worth to Memphis, Dallas 37.72, as compared with 26.55 from Kansas City. The lowest earnings per car-mile we find in any of the Texas rates is from Sweetwater, which pays 28 cents for a distance of 742 miles.

My Exhibit 6 is a statement comparing the rates from Kansas City to Memphis with rates from Kansas City to Oklahoma points. This shows the general level of rates between Kansas City and Oklahoma points, there being a southbound movement of horses and mules. The lowest car-mile revenue shown between Kansas City and Oklahoma is 26.83 cents, but the distance is considerably greater than from Kansas City to Memphis.

It should also be borne in mind that the proposed rate from Kansas City to Memphis likewise applies from the other lower Missouri River crossings, which usually take the Kansas City rate, namely, Atchison, Leavenworth, and St. Joseph. My Exhibit 7 shows the present and proposed rates from those points to Memphis, with the car-mile earnings, as well as the average distance from all of the points taking the Kansas City rate, 519 miles, which produces a car-mile revenue of 24.78 cents. There is further shown on this exhibit rates for the same distances prescribed by the Commission in the Hudson mule case, I. C. C. Docket No. 9966.

I have shown also on this exhibit the proposed rates from Omaha and Nebraska City, Nebraska, which are made differentially over Kansas City and from which points we have advanced the rates to the same extent as the rates from Kansas City are advanced. From Omaha we earn only 22.43 cents per car-mile, while on the Hudson mule [fol. 273] scale for the same distance the revenue would be 24.56 cents. I also point out the comparison of the car-mile revenue on the rates from Kansas City to Chicago and other points with what we would earn on the proposed rates from all the Missouri River crossings to Memphis. In showing the rates prescribed in the Hudson Mule case, I

have added 25 per cent to the figures shown in the Commission's report, as the report expressly contemplates that the Ex Parte 74 increases are to be added, and the tariffs that have been filed to become effective May 1, 1922, the present effective date of the order, include such increases.

My Exhibit 8 presents a comparison of the rate from Kansas City to Memphis with the rates from St. Louis to points in the Southwest. While the rates shown apply between St. Louis and southwestern points, the bulk of the movement would be southbound. We have shown a number of points in the States of Arkansas, Oklahoma, Kansas and Missouri for approximately the same distances, and the exhibit indicates that in all cases our earnings per car-mile are higher than we earn on the proposed rate from Kansas City to Memphis.

My Exhibit 9 is a comparison between the rates on cattle and the rates on horses and mules from Kansas City to Mississippi River points. While it is probably true that we have not in the Southwest any fixed relation between the rates on horses and mules and the rates on cattle, I think it is generally conceded that the horse and mule rates should be somewhat higher. This exhibit shows that from Kansas City to Chicago the horse and mule rate is 142½ per cent of the cattle rate, while to St. Louis and East St. Louis it is 123½ per cent; also, that the present rate to Memphis is only 95 per cent and the proposed rate is only 112 per cent.

My Exhibit 10 compares the proposed rates from Wichita [fol. 274] and Kansas City to some of the points on our line from Mammoth Springs to Memphis with the rates established by the Commission in the Hudson Mule case. The Commission's order in that case is dated July 12, 1921, and it therefore represents an investigation of very recent date. The case was vigorously contested and three separate hearings were held, in which voluminous testimony as to all phases of the handling of this commodity was introduced. We always felt that the conditions in the Southwest justify a level of rates somewhat higher than in the Southeast.

In Docket No. 9702, 55 I. C. C. 515, the Commission found that the conditions surrounding the movement of traffic from Kansas City and other Missouri River points to Memphis and intermediate Arkansas points were similar to those existing in the Southwest generally. In Docket No.

9332, a complaint of the Memphis Freight Bureau, the complainant was attacking the class and commodity rates from Memphis to points east thereof. In endeavoring to justify the level of their rates the carriers presented a number of exhibits showing that the existing rates from Memphis to the eastern destinations were lower than rates which had been fixed by the Commission for operation within southwestern territory. This case has not yet been decided, but in the Examiner's proposed report, commenting upon that contention, he says that the table set forth in Appendix A thereto, which was compiled by the defendants, shows there is but little difference between the traffic density, revenue, and operating ratios of the southeastern and southwestern lines as a whole, but that the traffic density and revenues of the Illinois Central are higher than the average of the southeastern lines, though the figures for that road include its traffic in the state of Illinois, which is much heavier than on that part of its lines in question.

[fol. 275] Based upon that opinion we would be justified in carrying as high rates in the Southwest as in the Southeast, but in I. & S. Docket No. 1303, Part 2, 64 I. C. C. 306, the Commission established a line of class rates from St. Louis to Mississippi River crossings, giving consideration to the existing conditions east of the river, which is very considerably lower than the scale it had fixed for use from St. Louis to points in southern Missouri, Arkansas, and Louisiana directly west of the river, thereby indicating, taking those two opinions together, that the Commission feels that the rates in the Southeast should be considerably lower than in the Southwest.

The proposed rates from Kansas City and Wichita to points on our lines from Mammoth Springs to Memphis are not anything like as high as the rates established by the Commission for use throughout the Southeast in the Hudson Mule case, and to that extent we feel they are lower than they should be, as we think we should really be authorized to maintain a higher level of rates than in the Southeast.

Furthermore, in Docket No. 9702 the Commission authorized generally the application of the Memphis bridge toll in connection with any mileage scale applied between Memphis and points west. The bridge toll on livestock is $9.00 per car, and that figure should really be added to the increased basis of the Hudson Mule scale shown in my ex-

hibit. Another point of comparison that should not be overlooked is the fact that in southeastern territory, where the Hudson mule scale is applied, no free transportation is granted to attendants in charge of livestock, either going or coming, while our rates from Kansas City and Wichita to Memphis and intermediate points include free transportation for attendants. To points in Arkansas we pro-
[fol. 276] vide for one man in charge each way with from one to five cars. On traffic destined to Memphis one man is given free transportation in charge of one car going but not returning, although with from two to ten cars one man is given free transportation both ways on the Memphis adjustment. The passenger fare from Kansas City to Memphis in day coaches is $17.62; to Jonesboro, Ark., $15.11; to Mammoth Springs $12.32. From Wichita the fare to Memphis is $20.58; to Jonesboro $18.08; to Mammoth Springs $15.30. That much additional credit should be given in comparing our rates in the Southwest with the rates authorized in the Hudson Mule case.

It is my opinion, based upon a study of the livestock rates throughout the Southwest ever since I have been in this territory, which has been over eight years, that they are all too low and do not bear their share of the transportation costs. One of the principal reasons for this statement is the fact that we are limited in our carload earnings on account of the nature of the commodity. It is impossible for us to increase our earnings per car in any way other than by increasing the rate. As already stated, the rate on horses and mules from Kansas City had not been increased for a great many years prior to General Order No. 28. There is no question but that the unit of operating cost is the car, and therefore the revenue we received per car is the unit which should be given most attention in undertaking to measure the level of a carload freight rate. As is well known the railroads in the past 10 or 15 years have greatly increased the capacity of box cars and have discarded the cars of smaller tonnage-carrying capacity, and the result has been a gradual increase in the average load-
[fol. 277] ing per car and consequently an increase in the average earnings per car without any increase in the rate per 100 pounds.

My Exhibit 11 sets out the loading of livestock in comparison with the loading of other freight. It shows that

the average loading of livestock in 1906 was 10.5 tons per car and in 1920 it had increased to 10.72 tons, that being the highest of any year except 1917, when it was 10.81. It will therefore be seen that the increase in the per-car revenue because of increase in loading amounts to nothing. Compared with this the average loading on all freight in 1906 was 23.24, while in 1920 it was 30.70, an increase of 32 per cent. Stated in another way, without any increase whatever in the rate, we have by increasing the average loading increased our revenue on the average freight except livestock 32 per cent, whereas on livestock we have made no increase at all.

Another item of excessive expense in connection with the handling of livestock is the matter of liability. My Exhibit 12 shows our claim payments for the year 1921, from which it will be seen that the claim payments on all freight including horses and mules, amounted to 2.9 per cent of the revenue, while on horses and mules alone it amounted to 12.9 per cent. Further, our average claim payments per car of all horses and mules for the year 1921 was $10.25.

With these facts before us, I show in my Exhibit 13 a comparison of our earnings per car on horses and mules with that on other freight moving between Kansas City and Memphis. I have shown on this exhibit simply those commodities which probably move between these points. In connection with the rate on hay, on which we earn only [fol. 278] $62.40 per car, I want to state that these rates should have been revised in connection with the general revision now being made in I. & S. Docket No. 1303, they being lower than the proposed rates from St. Louis to Memphis, but on account of the great volume of work we were unable to include that revision of the hay rates. However, this is a very low grade commodity, which loads light, and on which it is entirely proper that our earnings per car should have been less than on horses and mules.

The revenue per car on pig iron is $200.29. On packing-house products, upon which there is considerable liability and where it is necessary to give proper handling, the earnings at the present time are $146.00 and $174.00 per car, but under the proposed revision we will earn $192.00 and $207.00 per car. The weights shown are the average load on the Frisco for the year 1921 except in the case of vinegar, asphalt, cereal beverages, bags and bagging, and

other articles shown on the bottom of the first page, where we use the minimum weight. In the case of vinegar the average loading will run around 45,000 pounds per car, which would make a revenue of $171.00 instead of $114.00.

It will be seen from this exhibit that our earnings per car on horses and mules is far below the average of what we earn on other so-called dead freight on which the liability is far less and on which no expedited service is necessary. The Commission has frequently declared that there are a great many special services in connection with the livestock that is not true as to dead freight, mention of which will be found in the Hudson Mule case and also in the Wichita case. The special services I speak of apply also on the lines of the Frisco to-day. In the handling of live-[fol. 279] stock it is absolutely necessary to perform all of these additional services which are not necessary on any other class of freight.

One of the arguments advanced by Mr. Tedrow in his protest is the competitive situation between St. Louis and Kansas City in the handling of this particular traffic, so I have prepared an exhibit showing the difference in freight charges which a dealer would have to pay using Kansas City compared with St. Louis. That will be my Exhibit 14. It is my understanding that the great bulk of horses and mules are drawn from the territory west of the Missouri River, and my statement shows the charges that would be paid on shipments originating at the points shown, moving into the Kansas City market and then reshipped to Memphis, compared with the charges which would be paid if they were moved to St. Louis and reshipped from St. Louis to Memphis. It will be seen that with three exceptions the Kansas City market has a decided advantage over St. Louis, running as high as $34.00 per car, while St. Louis has an advantage of $10.00 on shipments originating at Lincoln, $1.50 at Stratton, Colo., and $2.50 at Siebert, Colo. Furthermore, the decision in the Hudson Mule case, which did not directly include Memphis, will without doubt make it necessary to revise the rate from St. Louis to Memphis upward, which will increase the advantage which the Kansas City market now has in shipments destined to Memphis.

(Exhibits 1 to 14, witness Nash, were duly received in evidence.)

[fol. 280] Cross examination.

By Mr. Tedrow:

I did not attend all the hearings in the Hudson Mule case but I know pretty well what happened. It is not true that the scale prescribed in that case was a compromise setting out the views of both parties. The railroads got together and constructed a scale which they proposed, and the Commission said it was all right. I do not think it was entirely acceptable to the complainants; I think they have made an effort to change it since the order was made, but the order of the Commission stands and will go into effect on May 1st. The present proportional rate from Kansas City to Memphis, which is not being changed, applies on traffic going into the Southeast and the Carolina territory. We shall eventually have to put in a line of through rates from Kansas City to the Mississippi Valley territory because of the fact that some of the lines operating through that territory will want to handle the traffic to New Orleans. The lines from Kansas City to New Orleans via Memphis and the Illinois Central are only 10 miles longer than the short line, and there isn't any doubt but that we will have to put in through rates that will observe the fourth section requirements, so we can not therefore make the rates to that territory on the full Memphis combination. The rates as to points back in the interior will no doubt have to be realigned somewhat in line with the rates put in on the direct route, but as it stands to-day I concede your point that the rate proposed by us from Kansas City to Memphis will be used in making rates to the Mississippi Valley territory except where the rate to a southeastern point based on the [fol. 281] proportional produces a lower rate that will have to be observed as a maximum.

It is true that the general adjustment of class and commodity rates from Kansas City to Texarkana is higher than from Kansas City to Memphis. I want to amend my answer to this effect, that I had in mind only the class rate adjustment in saying the Commission refused to permit the carriers to apply the full 9702 scale from Kansas City to Memphis because of the great amount of increase it would make. Regardless of that fact, though, the Kansas City-Texarkana rate on horses and mules is absurdly low,

and in taking it as a measure for the Kansas City-Memphis rate we took about the lowest rate we had for the distance in that territory. The scale prescribed in the Hudson case does not include a bridge toll but applies flat from Cincinnati and other Ohio River crossings, and the rate from St. Louis is made by adding a differential to the Ohio River rates. You don't have to add a bridge toll to justify the proposed Kansas City-Memphis rate by use of the Hudson Mule scale; it is already lower than the Hudson Mule scale would make it and if you add the bridge toll it would be just that much lower comparatively. I do not think it makes any particular difference but just wanted to call attention to it.

The proposed rate of $117.00 from Wichita to Mammoth Springs shown on my Exhibit 2 should be $115.00. That was a tariff error to which I intended to call attention. The rate from Kansas City to Chicago shown in my Exhibit 3 is the local rate to Chicago, I admit, and traffic that is going to the eastern territory moves on the rate to the Mississippi River and there picks up the through rate from the Mississippi River.

[fol. 282] In the case of the movement to Central Freight Association territory, the rates shown in my Exhibit 4, or the most of them, are made up of combinations on the Mississippi River. As to whether they are exactly comparable with the movement to Memphis, you can always compare one thing with another. If they were only 10 or 15 per cent higher than the rate from Kansas City to Memphis, I would say it would not be a valuable comparison, but you will find they are from 50 up to almost 100 per cent higher, so I do think the exhibit is well worthy of consideration. In C. F. A. territory the second class rates apply, and all the horse and mule traffic in that territory moves on that basis. As to whether the second class rates are proper and reasonable, they are the rates that move the traffic; they have been in effect in that territory for a great many years and so far as I have been able to determine there has never been a complaint about them, so I think we are justified in assuming that they are properly adjusted rates.

With reference to my Exhibit 5, with the possible exception of Fort Worth, the rates shown therein apply from the producing territory into a market, such as Kansas City

and Memphis. I fail to see any radical difference between a rate adjustment from one market to another market and from a producing territory into a market; I think they are very properly comparable. As to the grain rates between markets being lower in level than rates from producing sections to markets, I do not think anything on earth can compare with the grain adjustment; the rates between markets are generally balances of through rates, any way you figure it. I think the rate on horses and mules from Kansas City to Memphis was originally made as low as it was with an idea of competing in the Southeast with the St. Louis market, but if you will compare the proposed [fol. 283] rate from Kansas City to Memphis with the rate from Kansas City to St. Louis or from Kansas City to Chicago or from St. Louis to Memphis or from Fort Worth to Memphis, anywhere you compare it, you will find it is lower than anything you can find anywhere else except in the territory out in Kansas and Nebraska, where we have got to have a split, and that is why it is so low. I do not know whether the $192.00 rate from Fort Worth to Memphis is a class rate or a commodity rate. Generally speaking, I think you will find that traffic and transportation conditions from Fort Worth in an easterly direction to Memphis, as compared with the southerly or southeasterly direction to Houston or Shreveport or into that territory down there, are generally comparable.

With respect to my Exhibit 11, I think we can safely say that all livestock loads practically to the minimum weight and not above it, although sheep and hogs load lighter than cattle and horses. My Exhibit 12 does not include overcharge claims or anything of that kind, merely loss and damage claims, including damages paid on account of delay in transportation. It includes all of the horses that we have transported, including race horses and fine breeding stock, but the race horses and breeding stock that we have transported would be a very nominal proposition. As the exhibit shows, we have had some tremendous big losses on the horse traffic. I am sure we have not had any wrecks. About $7,000.00 out of that $13,000.00 was so-called unlocated damage, and about $2,000.00 more of that was for delays. Horses are vastly more liable to damage than ordinary livestock. Any little scratch or blemish on a horse

decreases its saleability, as they are sold largely on looks, and the same is true of mules. We pay a great many [fol. 284] damage claims because of delays. If a carload of horses or mules is delayed 24 hours for any reason, if it is held out behind a wreck or something of that kind, the horses get restless, they move about in the cars, and they kick and bite each other, with the result that when they get to the market the next day for sale they present a bedraggled and weary appearance, and the market for horses is largely on the looks.

Another trouble with the horse is that he catches cold very quickly and one of the frequent causes of damage is the fact that we have got to be particularly careful during bad weather conditions in loading and unloading to prevent them from catching cold, and by far the most claims are paid on livestock and on horses and mules for this reason. Cattle come into a market and are slaughtered immediately; and if they catch cold or have been bruised a little it makes no difference.

With reference to my Exhibit 14, I should think that horses going from this western country into Memphis through Kansas City are in competition with horses moving through St. Louis from points in Missouri, Illinois, Iowa, and that territory. While an increase in the rate from Kansas City without a corresponding increase in the rate from St. Louis would disturb the market conditions that now exist, that does not, as I see it, offer any good reason for permitting Kansas City to retain an undue advantage. By that, I mean that the proposed rate from Kansas City to Memphis is still lower, distance considered, than the present rate from St. Louis to Memphis. I am speaking of the rate per ton-mile or per car-mile being lower from Kansas City. It is the general rule that the earnings per ton-mile or per car-mile decrease as distance increases, but [fol. 285] the car-mile earnings on our proposed rate would still be less than on the St. Louis rate, and it is my personal opinion that, considering the difference in the distance, the proposed adjustment is not out of line.

Eugene Mock was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination.

By Mr. Roberts:

I am Assistant General Freight Agent of the Missouri Pacific Railroad, St. Louis, Mo. Mr. Nash having fairly covered the ground as to the rates from Kansas City to Memphis, I will confine my remarks to New Orleans and points in Louisiana on the Missouri Pacific. In the Wichita Board of Trade complaint the Commission held that the current class A rates on horses and mules to points in Louisiana are not unreasonable, and under the order therein the carriers should properly have established class A rates on horses and mules, carloads, from Kansas City to New Orleans and points taking the same rate and to interior points in Louisiana. That would result in rates from Kansas City to Monroe, Georgetown, Alexandria, and Oakdale, La., $270.50; Kinder, La., $271.50; Lake Charles, La., $279.50; and New Orleans $296.50. Pending a revision under I. & S. Docket No. 1303 of the rates from St. Louis to Memphis and crossings south thereof to and including New Orleans, the carriers elected as a temporary measure to fix only the rates from Kansas City and Wichita to Memphis at $128.50 and $142.00, respectively, for 36 foot 6 inch cars, constructing the rates to New Orleans and points taking the same rates on the Memphis combination, using the local factor south of $78.00 per car, resulting in a through rate of $206.50 per car from Kansas City to New [fol. 286] Orleans. To other points in Louisiana the rates were graded until the New Orleans rate of $206.50 was reached, and that rate was held as the maximum in the balance of the territory involved.

The following is submitted in support of the rates thus obtained: A. They are considerally lower than the rates found not unreasonable in the Wichita Board of Trade case. B. They compare favorably with the rates for similar distances in the same general territory where transportation and other conditions are not dissimilar. C. They result generally in a less earning per car-mile than the rates on wheat, flour, and corn from and to the same territory.

Exhibit 15 shows the rates proposed from Kansas City, Mo., and from Wichita, Winfield and El Dorado, Kans., to representative destinations in Louisiana, including New

Orleans, contrasted with the current class A rates found not unreasonable in the Wichita case from Wichita to the same destinations. All of the present rates shown in the Missouri Pacific exhibits include the 10 per cent reduction, differing in that respect from Mr. Nash's exhibits.

Exhibit 16 is a comparison of the rates proposed with the rate supplied for similar distances in the same general territory where the transportation and other conditions are not dissimilar. The distances shown represent the single-line mileage of the Missouri Pacific Railroad.

Exhibit 17 shows the earnings per car-mile compared with the earnings per car-mile on wheat, corn and flour from and to the same territory.

Exhibit 18 contains a statement of the present rates from St. Louis to the Mississippi River crossings, Memphis and South, and the rates that would obtain under the Hudson [fol. 287] mule scale by using the distances from Cario to the crossings plussed by 19 cents per 100 pounds. That is the differential which the Southeastern lines will use from the Ohio River crossings in constructing the rate from St. Louis and East St. Louis to points in the Southeast. On or about May 1, 1922, the Louisville and Nashville Railroad and certain other east-side carriers will establish the mileage scale of rates on horses and mules prescribed in the Hudson mule case, being applicable from Ohio River crossings, also from St. Louis and East St. Louis, to points in the Southeast, including New Orleans.

From St. Louis and East St. Louis the rates to points in the Southeast, including New Orleans, will be made on a differential of 19 cents per 100 pounds over the rates from Evansville, Ind. Under Fourth Section Order No. 7542, the Mississippi Valley carriers are required to remove all low rates applicable on horses and mules from St. Louis to Mississippi River crossings, Memphis and south to New Orleans, and to establish in lieu thereof reasonable and proper dry land rates. While it is not yet definitely determined, it is understood that from St. Louis and East St. Louis to the lower Mississippi River crossings the carriers will establish the scale of rates authorized from Cairo in the Hudson mule case plus the 19-cent differential. That would make the rate from St. Louis and East St. Louis $135.00 per car to Memphis, $150.00 to Helena, $172.50 to Vicksburg, $181.50 to Natchez, and $193.00 to New Orleans.

That would necessitate a revision of the proposed rates from Kansas City in order to maintain the proper relation and to place the rates from Kansas City more nearly on a dry land basis.

[fol. 288] Exhibit 19 shows the train service of the Missouri Pacific to Memphis on single car lots of livestock. It also shows the point at which it is necessary to unload the stock for feed and rest, which is done at the expense of the carrier.

Exhibit 20 shows the train service or the so-called red ball schedule of the Missouri Pacific from Kansas City to Memphis. One exhibit shows livestock and the other dead freight.

Exhibit 21 shows the train schedules of the Missouri Pacific on shipments of livestock from Kansas City to New Orleans, also the feeding and rest point.

Exhibit 22 is a companion exhibit showing the service on dead freight, the so-called red ball service, from Kansas City to New Orleans.

Exhibit 23 shows the Missouri Pacific train schedules or service on the movement of livestock from Wichita to Memphis and the feeding and rest points.

Exhibit 24 is a companion exhibit showing the service on red ball or dead freight between the same points.

Exhibit 25 shows the train service of the Missouri Pacific on the movement of livestock from Wichita to New Orleans and the feeding and rest points.

Exhibit 26 is a companion exhibit showing the train service on red ball or dead freight from Wichita to New Orleans.

Livestock is considered the most important train traffic on the railroad, and every shipment requires close supervision on the part of the divisional operating forces. Heavy penalties frequently accrue whenever advertised schedules are not maintained due to fluctuation in market prices; rough handling, sometimes unavoidable, as a source of expense to the railroad, and interruption to service even [fol. 289] beyond the control of the company mean added expense to the company and particularly on cars of livestock. It means that it is necessary for livestock to move in through red ball or manifest trains which handle not in excess of 85 per cent of the tonnage rating, and during in-

clement weather they often contain but 50 per cent of this rating in order to maintain advertised schedules.

At feeding points it is necessary to switch out the livestock, move it to the stock pens, which are often located at outlying districts of the terminals by reason of the objectionable features to the local inhabitants in the maintaining of such pens, where the stock is unloaded by company employees. After the rest period expires it is necessary to reload all stock and make a special move of it to the train yards and switch it into its proper place in the through trains for further movement. In contrast with this, dead freight is moved in full tonnage train, placed in proper position therein at the initial make-up terminal and not re-switched at any immediate terminal to destination unless necessary to reduce tonnage of the train by reason of change in grades or when cars become in bad order. Also, no penalty is assessed by reason of delays if this class of traffic reaches destination within a period twice as long as the schedule time of the manifest or red ball trains, that being considered reasonable service.

The Missouri Pacific Railroad reaches Kansas City, Wichita, Memphis, Natchez and New Orleans with its own rails, and serves all the Mississippi River crossings except Vicksburg with its own rails.

(Exhibits 15 to 26, witness Mock, were duly received in evidence.)

[fol. 290] Cross examination.

By Mr. Tedrow:

As to whether the rates on horses between Kansas City and Memphis have ever been made except on a dry land basis, they are influenced by the low levels of rates applicable from St. Louis to Memphis and crossings south; those rates have always been depressed and are termed river compelled rates. It is true that no adjustment on livestock rates was proposed in I. & S. Docket No. 1303, but there were fourth section violations on livestock up and down the Mississippi River as in the case of other commodities. The Missouri Pacific has withdrawn as of April 1st from the livestock traffic between St. Louis and all crossings, Memphis and south, also on the east in the Mississippi

Valley territory. The rates published in the revision under I. & S. 1303, effective March 1, 1921, were put in on short time and under threat of prosecution. We had to close our tariffs without treating livestock and salt, and in this last revision effective April 1st livestock and salt were again not treated, but the Mississippi Valley carriers are now revising the rates on salt and livestock.

I am not prepared to say whether there was any steamboat competition with the railroads in carrying livestock on the Mississippi River, but all of our rates from St. Louis to the lower Mississippi River crossings are termed river compelled rates; we look upon them in that light and I understand the Commission views them in the same light.

Referring to my Exhibit 18, the present rate from St. Louis to Memphis of $75.00 will be increased under the Hudson mule scale to $135.50, and from Memphis to New Orleans the Hudson mule scale will make it $129.00 versus the present rate of $78.00.

[fol. 291] Turning to my Exhibit 16 and comparing the rate of $145.00 in the second column from Kansas City to Monroe as against Pyote, Texas, 696 miles, $208.00, I understand that rate from Pyote to be a commodity rate, but do not recall whether it is a mileage or a specific rate.

With respect to my Exhibit 15, I know it is generally true that from Wichita and Kansas City to Texas generally and to a large portion of Louisiana there is nothing better than Class A rates, and the Commission has held the class A rates are not unreasonable on this traffic. I have never made an investigation as to whether the class rates apply on horses in any other section of this western country, but certainly the movement at the present time out of Wichita to that territory is on the class A basis, which is an exception to the classification.

As to my Exhibit 16, the transportation conditions affecting the movement from Kansas City to these Louisiana points are not dissimilar from the movement of livestock from Texas to Louisiana, but I doubt that they would be more favorable; those are low grade lines into Louisiana and they traverse no mountain ranges such as the Frisco and Missouri Pacific.

Examination.

By Examiner Wagner:

The proposed dry land rates from St. Louis to the lower crossings will be put in about May 1st, and if the Kansas City rates are not increased relatively Kansas City will have lower rates to these same crossings than St. Louis. It would be my judgment that the rates from Kansas City will exceed the St. Louis rates $25.00 per car to Memphis and the crossings south, and under the fourth section that will operate to these destinations in the interior on the west side. No fourth section departures will grow out of the [fol. 292] suspended rates that I know of, as the Missouri Pacific attempted to check the fourth section situation and I believe it did.

The present rate to Helena is $115.00, which is a tariff error. That rate should have been published on the Memphis combination at the same time the Kansas City to Memphis rate was published. The Memphis combination would result in a rate of $158.00 to Helena, and that is the figure we intended to publish, but for some unknown cause Agent Speiden made no change in the Helena rate and let it stand at $115.00 per car. That would create a departure, which must be removed.

To Lake Charles from Kansas City we are proposing the New Orleans rate of $206.50. I am not quite sure but I think the Kansas City Southern has perhaps revised its tariffs to that territory, as to which I will later submit a memorandum. As to whether the rates to L. R. & N. points in connection with the Missouri Pacific via Alexandria were advanced so as to clear the fourth section, and also in connection with the L. & A. via Georgetown, I am not advised, but will check that up and advise the Commission and the parties within the next ten days. (Note: See letter from Mr. Mock to Interstate Commerce Commission dated April 5, 1922, attached to exhibits accompanying transcript.)

Cross-examination.

By Mr. Tedrow:

If we increase the horse rates from Kansas City to Memphis and to Louisiana points in relation to the in-

creases that will be made in the rates from St. Louis, it will eventually affect the entire situation just as the Hudson mule case is going to affect the adjustment of the entire Southeast. I am not familiar with the cases in which it [fol. 293] has been found that the rates on horses should be 120 per cent of the rates on cattle, but I should say that the rates on cattle in the Southwest are subject to change. It may be that in the revision of the rates on horses and mules it will be necessary to revise the rates on all classes of livestock, as has already happened in the Southeast. The violations in the Southeast were protected under blanket applications, and they still have protection along with the Tennessee packers case and the Hudson mule case, but they now must conform to the fourth section and they have done that by a system of mileage rates.

I see no other way to adjust the Southwest except on a mileage basis. In the 9702 case that is now pending we have submitted mileage scales on some 32 representative commodities under the principle laid down by the Commission in that case. As to whether the mileage rates to Louisiana and to Memphis will require us to alter the mileage scale applied west of that territory in Oklahoma, Texas, and New Mexico, your level of rates in Arkansas and Louisiana will finally be the level of rates throughout the Southwest generally, as otherwise you can not live under the fourth section and keep the routes open. As to whether the mileage scale prescribed in 22 I. C. C. that applies on livestock in Texas, Louisiana, and New Mexico, and to the markets in Fort Worth, Wichita, and Oklahoma City, the 1716 scale, would serve as at least the maximum for rates to Memphis and New Orleans, that does not necessarily follow, because the Commission has found the transportation and traffic conditions are more favorable in the Southeast and has prescribed scales somewhat higher than those west of the Mississippi River. In view of that and under changed conditions, I believe that upon further hearing we would be accorded in the Southwest higher rates than were [fol. 294] originally accorded in the 1716 scale. I know the carriers are not at all in agreement that that is a proper scale for the service.

It may be true that there is a great deal more livestock moving in the territory west of the Mississippi River than in the territory east thereof, but that would have nothing

to do with the measure of the rates. It is a reasonable rate regardless of the volume of the movement. I am not familiar with the decision of the Commission in the Dimmitt-Caudle-Smith case, but I do not think the 1716 scale should apply as a maximum for the reason that we have changed conditions, and because the Commission may have rendered a decision four or five or six years ago does not mean it will hold to the same view on rehearing. I do not think that conditions have changed for the better in the Southwest, but we have got to where the railroads are now almost literally under the fourth section and it seems to me that the rates will have to be revised to maintain the general level throughout the Southwest. That will necessitate some advances and some reductions, but there will be a general leveling of the rates.

Respondents rest.

J. G. CRUISE was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination.

By Mr. Tedrow:

I am Assistant Transportation Commissioner of the Kansas City Chamber of Commerce. My Exhibit 27 is a map. The territory to which the rate advances are proposed is the part cross-hatched on the map, and includes the line of the Frisco from Peach, Ark., to Memphis, and the line of the Missouri Pacific in Louisiana from Monroe [fol. 295] to Alexandria, inclusive; also, the line of the L. & A. from Grant to Vidalia, La., and the line of the L. R. & N. from the first station south of Alexandria to New Orleans inclusive. We have shown on this map a statement of the present and proposed rates to typical points of destination; also, what the rates would be if measured by the Shreveport scale. For instance, to Peach, Ark., the present rate is $98.50 and the proposed rate is $115.00, while the Shreveport scale would give a rate of $100.00.

Exhibit 28 consists of 28 pages. Page 1 is a statement of the receipts of horses and mules at Kansas City from various other markets. The receipts are shown in number of head and include mules. Kansas City is one of the very

important horse and mule markets in the United States; for instance, in 1918 we shipped 85,000 head of horses, St. Joseph shipped 37,000, Atlanta nearly 70,000. The receipts and shipments for Kansas City are also shown for the years 1914 to 1921. The shipments run from the high figure of 128,000 head in 1917 down to 31,000 in 1921.

This statement further shows that the St. Louis market is the largest horse and mule market in the United States. During 1919 the receipts and shipments were both over 250,000 head. This statement also shows the shipments of horses and mules from Kansas City to Louisiana and demonstrates that Louisiana is an important destination territory. In 1919 nearly 14 per cent of our total receipts went to Louisiana. The shipments to Louisiana in 1921 were a little better than 5 per cent of the receipts, but of course bad commercial conditions in the South generally would account for the falling off. It was not convenient for us to get the shipments out of Wichita in comparison with Kansas City and just left those out, but we can furnish that information if desired.

[fol. 296] Page 2 shows the present Shreveport scale applying on horses between Texas points and between Texas and Louisana. The rates I have shown are without the 10 per cent reduction. That scale was set in the Shreveport case, 41 I. C. C. 83, 48 I. C. C. 312, and its application was extended to Natchez in the Natchez Chamber of Commerce complaint, 52 I. C. C. 558, except that a differential of 6 cents per 100 pounds was provided for distances in excess of 750 miles.

The Shreveport scale was laid down some years ago, and on sheet 3 I have shown the original scale.

It is my opinion that traffic and transportation conditions between Kansas City and Louisiana points is much more favorable than between Texas points, between Texas points and Louisiana points, and also between Texas points and Natchez.

Q. (By Mr. Roberts): Between Texas and Louisiana there is no mountainous country to cross?

A. No, sir.

Q. It is a flat, level country?

A. To a certain extent, yes sir.

The witness: Sheet 4 of the Exhibit shows that the traffic density between Kansas City and Memphis is 1,500,-

000. Between Kansas City and southern Kansas points the density runs as high as over 2,600,000 on the Santa Fe; between Kansas City and Pittsburg on the K. C. S. it is over 1,300,000; and between Kansas City and Coffeeville on the M. K. & T. it is 1,400,000. That is the territory in Kansas through which traffic moves going to Louisiana points. The traffic density of Arkansas was 718,000, of Louisiana 672,000, and of Texas only 570,000.

[fol. 297] I do not regard the Shreveport scale on horses as being low for reasons which I will explain. Pages 5 and 6 of the exhibit compare rates on horses from western points to Kansas City with rates on horses from Kansas City to Louisiana points for comparable distances. It also shows what the rates would be if the Shreveport scale applied. In cases where the Louisiana destinations are points to which increases are proposed, such increases are shown. Taking Jena, La., for example, our present rate is $147.50 and if we had the Shreveport scale it would be $147.00, justifying our present rate. But between Kansas City and Sedalia, Colo., the same distance, you will find the Shreveport scale is much higher than the present rate of $119.50.

On page 6, comparing Osage, Wyo., with Angola, La., almost the same situation is presented. You will find running through this exhibit that the rates between Kansas City and western points are less in every case than the Shreveport basis. In I. & S. Docket No. 137, Rates on Horses and Mules from Kansas City, 26 I. C. C. 47, increased rates were found not to be unreasonable on horses between Chicago and the Missouri River and western territory, and it is the rates established as the result of that decision which we are comparing here with rates to the South. On these two sheets you will find reference to the Shreveport scale extended, which simply means that as the Shreveport scale ends at 750 miles we have extended it beyond.

Sheets 7, 8, 9, and 10 contain a comparison of horse rates between Kansas City and western points with horse rates from Kansas City to Texas. They show that the Shreveport scale is higher than the western basis in every in-
[fol. 298] stance, and further that the Shreveport scale is not a low scale.

Sheets 11 and 12 simply measure the rates on horses to Louisiana points with the Shreveport scale. Where south-

bound per-car rates are in effect they are shown, and you will see that they are justified by the Shreveport scale. Where under "Per-car Rates" the column is blank, it means that the rates are on class basis. Where rates are on the class basis, the adjustment to Louisiana is now under attack in Docket No. 13001, which was tried in Kansas City on November 28th and is now before the Commission. This exhibit also shows the excessive level of the proposed rates. Where destinations shown here are involved in the increases, the proposed increased rates are shown. For instance, to Brittany, La., our present rate of $152.00, the same as on the Shreveport scale, is proposed to be increased to $206.50.

Sheets 13, 14 and 15 are a statement of territory in Texas and Louisiana to which there are commodity rates from Kansas City, and is a duplicate of an exhibit introduced in Docket No. 13001; however, Texas is not involved in this case. From sheet 14 you will see that to Louisiana points, where commodity rates are published, there is a close line-up with St. Louis. The rates are also measured by the Shreveport scale. The northbound rates are also shown and generally speaking they are higher than the Shreveport scale. In some instances St. Louis has commodity rates to destinations to which Kansas City has no commodity rates.

Between Kansas City and all western states except Texas and Louisiana, rates are on commodity basis applying between. Northbound from Texas there are commodity rates. There are a few commodity rates from Kansas City to Texas, applying particularly to the Panhandle and to isolated specific destinations. To Louisiana there is a pretty [fol. 299] fair line-up of commodity rates. From Kansas City to the great Texas territory, and from Kansas City to a great deal of territory in Louisiana we have nothing but class A on horses, which is now under attack. Furthermore, besides being unreasonable, discriminatory, and prejudicial, the class A basis is in violation of section 4.

On sheets 16, 17, and 18 are shown commodity rates on horses between Kansas City and Wyoming, Colorado, Nebraska, Kansas, Oklahoma, and New Mexico. The class A rates are also shown. This is only to illustrate the general western situation.

Sheet 19 deals specifically with the territory to which advances are proposed. From Kansas City to Memphis an increase of $30.00 is proposed, up to $128.50. The Shreveport scale would make only $111.50. With the exception of the Hudson scale, rates shown on this exhibit have been decreased the 10 per cent. In each and every case through the exhibit the advances proposed are much higher than what the rates would be on the Shreveport scale, which in fact would cut the present rates in many instances from Kansas City. Furthermore, no increases are proposed from St. Louis, Memphis, Fort Worth, or other horse and mule markets with which our people are in competition.

I have tried in this exhibit to cover the entire territory involved. In some cases I have taken a stretch of territory but averaged the distances; for instance, Richland to Shrewsbury is averaged for the distance.

Answering Mr. Nash's question, I would say that the present rates are shown with the 10 per cent reduction, after the expiration of which the Shreveport scale rates will be [fol. 300] increased to that extent. Accordingly, if we take the group from Dorothy to Algoa, 417 miles, where the proposed rate from Kansas City is $119.00, the Shreveport scale without the 10 per cent reduction makes $119.60, and that is the figure which would properly be comparable with the proposed rate.

Exam. Wagner: In other words, your proposed rates to those points, with 10 per cent deducted, would be approximately $107.00.

Mr. Nash: Yes, $107.10.

Exam. Wagner: As compared with $107.00 under the Shreveport scale.

Mr. Nash: Yes, sir.

(Exhibits 27 and 28, witness Cruise, were duly received in evidence.)

Cross-examination.

By Mr. Nash:

The proposed rates shown on my Exhibit 27, the map, are subject to the 10 per cent deduction as in the case of page 19 of Exhibit 28, but the present rates shown thereon are the rates now being applied, or 90 per cent of the tariff

rate. In showing the application of the Shreveport scale to Memphis I have not given consideration to any bridge toll, nor have I done so in comparing that with New Orleans. Based on the Examiner's report, that bridge toll should not be added instead of the 20-mile arbitrary.

Mr. Tedrow: Mr. Nash, is it customary to add the bridge toll in making rates between Kansas City and Memphis?

Mr. Nash: No, but it would be in applying the Shreveport scale and the Natchez scale between New Orleans and points west of the Mississippi River. I haven't got anything to do with the bridge toll arbitrary from St. Louis or Cin- [fol. 301] cinnati down into that territory in the Southeast. In fixing the rate from Kansas City to Memphis we could have made it the amount of the bridge toll over the rate to Bridge Junction, but instead of doing so we made it the same as to Bridge Junction and applied that as the maximum from intermediate points on the west side.

Re-direct examination.

By Mr. Tedrow:

The witness: The general adjustment of class and commodity rates from Kansas City to Texarkana is somewhat higher than it is to Memphis. From Kansas City to Chicago it is about the same as from Kansas City to Memphis. I have found it true that to a great extent the railroads consider rates between markets in a different way and treat them in a different manner from rates from producing points to a market; in other words, they make two sets of rates, one called gathering rates and the other rates between the markets, that being generally true as to grain.

Re-cross examination.

By Mr. Nash:

That is not necessarily due to the fourth section. As to how that occurs on grain, the rate from Kansas City to St. Louis is somewhat lower than for similar distances to the Missouri River from producing territory. I do not have in mind any specific instance. Rates from points immediately east of the Missouri River into St. Louis are ordinarily about the same as from Kansas City or Omaha to St.

Louis. I do not have any specific figures that I could give you where the carriers apply that kind of a basis on other commodities, although I believe that is generally true of hay.

J. M. PIPER was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

[fol. 302] Direct examination.

By Mr. Tedrow:

I am engaged in the horse and mule business at the Kansas City market, being in the commission business and also in the wholesale business connected with Piper Brothers, buying, selling, receiving, and shipping horses in this general territory. In my business I sell and ship horses to Memphis and the Louisiana destinations here involved, as indicated on the map identified as Exhibit 27. Louisiana is an important destination territory to me, but in some places I have difficulty in getting into there on account of the rates; that is generally true where we do not have commodity rates, where the class A basis applies. One of those high rate points is Franklin, La., but right offhand I can not name any other. Our rates to these Louisiana points are around $285.00 to $300.00. I am not able to do business very well at Franklin, but do not have any difficulty in shipping to the territory where we have commodity rates; our basis is Shreveport, I think, where commodity rates apply.

Memphis is a very important destination point in my business; for about eight months of the year we ship anywhere from two to five loads a week there. That is business stopping at Memphis, and then we have some business at points in the Mississippi Valley below Memphis. Aside from Kansas City the important horse and mule markets in the west are Memphis, Fort Worth, St. Louis, and Wichita; Shreveport is not a wholesale market. I made a trip through Texas and Louisiana where this rate is and we could not do any business. We get practically all their business at Beaumont or Lake Charles or Shreveport at the reasonable rates to those points, but in Texas, at Marland, Waco, Durant and Terrell and in through

there where they ship a lot of stock during the year, they [fol. 303] just would not come here to buy.

Examination.

By Examiner Wagner:

As to whether it is the level of the rate or because our rates do not compare properly with the others, it is not compared properly; they went to Fort Worth and bought their stock. The high freight rate was the reason we could not get the business, but I do not think that would be so if the rates were similarly high from Fort Worth. They claim they get their stock home so much cheaper from Fort Worth than they can from here that they can not afford to buy and pay this high rate of freight.

Re-direct examination.

By Mr. Tedrow:

Assuming I had a rate of $200.00 to a particular point in Louisiana and the rate from Fort Worth was $75.00, that would shut me out of the business there because Fort Worth would have too much of an advantage under me. But if the rate from both points was $300.00, or practically the same from both places, I do not know that it would keep me from getting into that territory.

Cross-examination.

By Mr. Roberts:

This is my fifth year in the horse and mule business at Kansas City. The shipments I handle as a rule come from Kansas, Missouri, Iowa, and Nebraska, very little from Oklahoma and Colorado. The horses that come from Iowa and Missouri are smoother and better than those that come from Colorado and western Kansas and western Nebraska. In a general way we ship to Texas, Louisiana, Mississippi, North and South Carolina, Georgia and Alabama, also some to New York, Boston, Philadelphia, and Buffalo, very few to Indiana and none to Illinois; their market comes from the Northwest. The average loading of mules to-day is about 25 to the car. The mules shipped out from Kansas

[fol. 304] City are valued around $140.00 or $150.00 a head, and at Memphis they would advance from $10.00 to $15.00 or $20.00 a head; in the wholesale business I suppose about $15.00 a head, but at retail they would sell for more than that. In speaking of the movement in and out of Kansas City, I do not refer particularly to that of my own firm but have in mind the business in general here in Kansas City, with which I am familiar.

D. H. Robertson was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination.

By Mr. Tedrow:

I am engaged in buying and selling and shipping horses and mules at Kansas City into this general territory, Louisiana and Texas, in the firm name of D. H. Robertson and Company. I make a few shipments to Memphis, not very many, not more than one car a week, but do not go through Memphis. Crowley is a point in Louisiana where the rate is higher than it used to be. The rate is now about $240.00 or $245.00, and I experience some difficulty in getting to Crowley now; I have two customers there and they told me they would handle more stuff if their freight rate was not so high.

Cross-examination.

By Mr. Roberts:

As to where they buy now, what they buy they buy up here. I have been acquainted with the market in Kansas City about 22 years. Horses are shipped from here to Louisiana, Texas, Mississippi, Alabama, Georgia, North and South Carolina, New York, Boston. We have a pretty fair trade with Texas; the horse men here ship to Marlin, Austin, San Antonio, and I had a shipment not long ago to Laredo and on into old Mexico.

The class of horse that we generally ship to the South [fol. 305] is what is called a southern horse; that is, a tidy, nice, trim, pretty, little animal, not so little either,

a horse that would weigh from 800 to 1100 pounds. The heavier horses go east, but I can not say that so much about mules. The horse and mule men at the Kansas City market receive most of their shipments from Iowa, Missouri, Kansas, Colorado, some few from Oklahoma, and not as many from Colorado as from Kansas, Iowa or Missouri. As a rule the horses and mules we get from Colorado and western Kansas do not compare with those that come from Iowa and Missouri. We get very few of what they used to call broncs; we get some from Montana, Idaho, Oregon, and the western Dakotas. As to whether the class of horses and mules we handle to-day are a good deal better class than they were some 10 or 15 years ago, I think they improved up to about five years ago but do not think there has been any improvement since then. Mules we ship to the South have a value of from $135.00 to $150.00 per head; horses from $75.00 to $125.00, but I handle very few horses and Mr. Piper can give you more information in regard to horses than I can. We get more mules from Colorado and western Kansas than you think we do.

Re-direct examination.

By Mr. Tedrow:

I have shipped lots of mules east but no horses. I haven't shipped any lately but the last I shipped was by express; that was about two years ago, 28 head, a little more than a carload.

J. M. Piper, being recalled as a witness, testified in substance as follows:

Direct examination.

By Mr. Tedrow:

I have lately been shipping horses east every week. I ship them by express mostly, as it is about as cheap and a good deal quicker; they go to Boston, New York, Philadel- [fol. 306] phia, Buffalo. I do not recall the freight rates, but there is very little difference in the freight and the express.

Exam. Wagner: They do not go through Memphis then?
A. No, sir.

Exam. Wagner: They are not involved in this case, that traffic.

Mr. Tedrow: That is all.

Exam. Wagner: Mr. Cruise, you made a blanket statement that the class A basis is in violation of section 4. Can you give an illustration?

Mr. Cruise: I do not know that I have an illustration, I think we have it in this 13001.

Mr. Tedrow: That isn't involved in this case because——

Exam. Wagner: The statement was made in this record and if he can cite an illustration bearing directly upon this record now is the time to submit it.

Mr. Tedrow: We don't need to because that is not involved over there.

Exam. Wagner: Mr. Cruise, what do you consider is the proper relationship, St. Louis against Kansas City, to the territory here involved?

Mr. Cruise: Kansas City ought to be on as favorable a basis as St. Louis.

Exam. Wagner: What do you call a favorable basis, equal rates?

Mr. Cruise: No, not necessarily equal rates.

Exam. Wagner: All you can say is that it [St. Louis] has an advantage but you can not say how much they should have.

[fol. 307] Mr. Tedrow: Will you let me answer that question? I will be sworn.

J. H. Tedrow was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination (pro se).

My idea of that would be that the present relationship should be maintained. For instance, the present rate from Kansas City to Memphis on horses is $98.50 per car and from St. Louis it is $75.00, a difference of $23.50. That is not very far from the difference of $25.00 in the scale proposed, and so far as Memphis is concerned we would not object to having our rates continued on that relationship, but when you work down farther into the Valley we think the difference should come together. Taking New

Orleans, for instance, the Kansas City rate is $169.00 and the rate from St. Louis is $138.00, a difference of $31.00. That might not be so far out of the way, considering that St. Louis is 710 miles to New Orleans as against 868 miles from Kansas City. Comparing the present rates to Louisiana, though, you will find they are very nearly equal to a considerable territory. Take pages 18 and 19 of our Exhibit 19, for instance; the present rate to Lenoria is $147.50 and the St. Louis rate is $145.50, and if possible we want to maintain our present relationship down there. As to the spread in distances being 53 miles, Kansas City against St. Louis, I do not think a spread of 50 miles is enough to disturb a substantial equality between two points. I am not exactly suggesting a spread of $31.00 at New Orleans, but that is the present difference and we will be satisfied with it.

[fol. 308] Mr. Mock: I am sure it would not be the carriers' purpose to maintain a $25.00 differential, Kansas City over St. Louis, to that territory where the mileage to Kansas City and St. Louis is approximately the same. On May 1st the rates to the crossings would be the $25.00 differential and then the interior territory would grade into those crossings.

Exam. Wagner: Then inferentially you and the protestant are together on the intermediate points and Memphis, but the protestant is willing to give $6.00 additional spread at New Orleans.

The witness: I also want to say how difficult it is going to be to apply the Hudson scale in this territory if it is true that the scale in the report does not reflect the 25 per cent advance. There are various findings in the decisions of the Commission, referring particularly to the Dimmitt-Caudle-Smith Company case in 47 I. C. C., setting the horse rates at 120 per cent of the cattle rates. You will find a line-up of horse rates from Texas points to Kansas City, for instance, on no particular relationship to the cattle rate just named there. If this Hudson scale is applied down into the Mississippi Valley from Kansas City, it will begin to slop over and take in a little more territory here, there, and the other place. It will interfere with the Dimmitt-Caudle-Smith scale, and it will cut over

in the west and interfere with the rates from Kansas City northbound, and to Texas, and between Kansas City and the western points, and the first thing you know you will have some modification of it all over this whole territory.

Exam. Wagner: Well, Mr. Tedrow, have you compared that 1716 scale?

[fol. 309] The witness: No, I am talking about the point of application of the Hudson scale case between Kansas City and Louisiana points.

Exam. Wagner: Have you compared that Dimmitt-Caudle-Smith scale with the scales involved in the Wichita case or the Hudson mule case to see whether or not there might be a change in the mind of the Commission about the level of the rates you have to-day as compared with the rates of those other days?

The witness: I have not, Mr. Examiner, I have not.

Mr. Mock: I want the record to be clear that my suggestion as to the $25.00 over St. Louis rates from Kansas City was predicated upon the rates from St. Louis to the Mississippi River crossings, Memphis and south, being brought under the proper dry land basis.

Exam. Wagner: In other words, the Hudson mule company scale over the Ohio River, plus 19 cents, fixing the rate from St. Louis.

Mr. Mock: Yes, sir.

Mr. Tedrow: You mean plus the Cairo rate?

Mr. Mock: Plus the Cairo rate.

Mr. Nash: Which makes a higher rate than if they applied the scale all the way from St. Louis.

Respondents rest.

(Whereupon, at 4:15 o'clock P. M., March 29, 1922, the hearing of the above matter was closed).

[fol. 310] EXHIBIT DD

Before the Interstate Commerce Commission

I. C. C. Docket No. 12358

TEXAS LIVESTOCK SHIPPERS PROTECTIVE LEAGUE et al., Complainants

versus

DIRECTOR GENERAL AS AGENT, ABILENE & SOUTHERN RAILWAY COMPANY et al., Defendants

Fort Worth, Texas, January 19, 1922.

Before Fred N. Oliver, Attorney-Examiner.
Met pursuant to notice.

APPEARANCES:

(Omitted, being as recited in 93 I. C. C. 479).

Proceedings

Exam. Oliver: The Interstate Commerce Commission has set for hearing at this time and place Docket No. 12358, Texas Livestock Shippers Protective League et al. versus Director General, As Agent, Abilene & Southern Railway Company et al.

It is alleged that the rates, rules, and regulations in effect for the transportation of horses, mules, hogs, cattle, sheep and goats between points in southwestern and western territories and points in Texas, to the extent that the rates from various interstate points to Texas points exceed the sum of the intermediate rates as published, cited in paragraph VII of the complaint, and to the extent that they exceed the outbound rates contemporaneously in effect between the same points and other rates, to the extent that the rates on horses and mules exceed 115 per cent of the rates on cattle contemporaneously in effect between the same points, to the extent that the rates between Texas [fol. 311] points and interstate points (except Oklahoma and northern Louisiana) exceed the Shreveport scale, and relation of the rates and minimum weights between different species of livestock and the minimum weights in different sections of the Southwest, have been and are unjust,

unreasonable, discriminatory, preferential and advantageous to complainants' competitors, and prejudicial and disadvantageous to complainants, and have resulted in the exaction from complainants of charges for transportation of numerous carloads of livestock shipped since January 1, 1917, between points in the aforesaid territories which have been, are now, and in the future will be unjust and unreasonable, in violation of sections 1, 2, and 3 of the Interstate Commerce Act, in violation of the aggregate-of-intermediate rates provision of section 4 of said Act, and in violation of section 10 of the Federal Control Act. The Commission is asked to prescribe for the future just and reasonable rates, rules, and regulations and to award reparation. Is that a correct statement of the issues?

Mr. Pelton: With one exception, I believe, where we except Oklahoma and northern Louisiana; that exception has been removed by amendment.

Exam. Oliver: This was prepared before the amendment was filed.

Mr. Wren: I want to get that straight. The copy we have excepts northern Louisiana but does not except Oklahoma.

Mr. Pelton: Well, the exception would include the Shreveport rate points.

Exam. Oliver: I think the voluntary statement for complainants that the exception was intended to include Shreveport rate points is sufficient.

[fol. 312] Mr. Wren: All right.

Mr. Pelton: At this time we wish to withdraw and abandon all complaints as to the rules, regulations, and rates applying on all livestock except horses and mules to and from Fort Worth and North Fort Worth, and confine the issue to the complaint as specified to horses and mules to and from Fort Worth and North Fort Worth.

B. D. Pelton was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination.

By Mr. Scrivner:

My Exhibit 1 contains a history of the rates on horses between Oklahoma and Texas and in Texas since October

31, 1916, showing the ratio of the interstate rates to the Shreveport scale, 48 I. C. C. 351, and also to the Railroad Commission of Texas scale, with a comparison of the increases, single-line application. The first six columns are the rates between Texas points and between Shreveport and Texas during this period. Immediately following column 6 is shown the percentage increase of the Texas rates, which range from 69.1 to 94.5 per cent. The average increase over the October 1, 1916, rates is approximately 78 per cent. Columns 7 to 11 contain some information as to the rates between Oklahoma and Texas, and following each of these columns are the ratios of such rates to those applying in Texas and betwen Texas and Shreveport for the same period.

Column 7 shows the rates between Oklahoma and Texas, October 31, 1916. The Oklahoma-Texas scale at that time was a straight class C rate; that is in column 7. Up to 55 miles this scale is lower than the rate then applying [fol. 313] between Texas points shown in column 1, but beyond that distance they increased rapidly, reaching a ratio of 1.5 to 1 for 200 miles, which continues out to the end of the scale. On April 5, 1917, the classification basis on horses and mules in southwestern territory was changed from class C to class A, those rates being shown in column 8, which brought about a heavy increase. Then came the 25 per cent increase under General Order 28, besides which there is another scale that made a very slight change which I was unable to locate, that coming between columns 8 and 9, after June 25, 1918. The next change was January 29, 1919, which was also very slight. That was followed by the 35 per cent increase of August 26, 1920, and those rates continued in effect until January 1st, when the 10 per cent reduction took effect. That reduction we have not carried out on this exhibit.

The ratio of those rates to the Shreveport scale applied for the same period is shown in the following column. The percentage increase over the October 31, 1916, rate is shown in the next to the last column, being 140 per cent, for instance, for the first distance there, 10 miles, while the corresponding increase on the Texas business shown in column 6 was 72.2 per cent. The approximate average increase was 126 per cent, while on the Texas rate it was 77.9 per cent, showing a greater increase on the interstate

rate than on the Texas rate, more than 50 per cent. You will note there is no increase shown there of less than 100 per cent. The lowest increase is 101.3 per cent for 400 miles, and it runs as high as 183 per cent, average approximately 126 per cent, while the rates between Texas points run approximately 78 per cent. Since November 1, 1916, these Texas rates have applied between Shreveport and Texas. Column 12 is the ratio of the interstate to the intrastate increases, and the next to the last column [fol. 314] shows the increase of the interstate rates. For instance, the rate for 10 miles on October 31st was 5 cents, and compared to the rate of 12 cents on August 26th there was an increase of 140 per cent.

Exhibit 2 shows the relative increase in rates on horses and mules and other livestock from Kansas City to Fort Worth since April 6, 1917. The first increase, April 7, 1917, was class C, 53 cents, to class A, 72 cents, 35.8 per cent. Under General Order 28, there was a straight 25 per cent increase on June 26, 1918, due to the fact that the class rates applied, which made the rate 90 cents. Under Ex Parte 74, August 26, 1920, the 35 per cent increase made the rate 121.5 cents. The total increase from 53 to 121.5 cents was 129.2 per cent. On January 1st the carriers have published a rate of $244.00 per car which reduces that ratio to 92.6 per cent. That $244.00 rate is the combination via the Katy on Russell Creek, Okla. During that same period the cattle rates were increased from class D to class B, 41 to 65 cents, and so forth. The purpose of that is to demonstrate the much greater increases on horses and mules than on any other kind of livestock.

Exhibit 3 shows a typical instance of increased rates on horses and mules and is similar to the preceding exhibit, the only difference being that it is brought down on a per-car basis.

Exhibit 4 shows the increased earnings on horses and mules from Kansas City to Fort Worth, 510 miles, since April 6, 1917, and is self-explanatory. I have also demonstrated there the great difference the shipper would have been paying since August 26, 1920, had the maximum increase of 7 cents per 100 pounds allowed on livestock rates under General Order 28 been applied. The car revenue is figured on a weight of 23,000 pounds, which ap- [fol. 315] plies throughout the Southwest, I believe, in all

tariffs except the Oklahoma interstate, which is 23,900. Also, all exhibits I have prepared here are on basis of a standard 36 foot car. It will be noted in this exhibit that the increase is exactly 100 per cent, including the 10 per cent reduction of January 1st. If we had been allowed the 7-cent maximum increase, it would have worked identically, but from August 26, 1920, until January 1st the car earnings were 54.8 and they would have been 48 cents.

Exhibit 5 is a map. It does not cover all of the territory involved in the pleadings, however, and does not get out in all of New Mexico and all of Louisiana.

Exhibit 6, which goes along with Exhibit 5, shows practically every point in the state of Oklahoma on the roads named on the title page. It shows the rates from Kansas City and Wichita to those points and from those points to Fort Worth, also the mileage, the total of those rates, the combination, and the excess of the through rates over the combination at all points. It also shows the half-way points and the rates charged from Kansas City and Wichita to those points and from Fort Worth to those points. All of these rates apply between in both directions. On page 1 is shown, for instance, the dead-line on the Frisco at Roff, Okla. The rate between Kansas City and Roff, 402 miles, is $119.50, while the rate between Fort Worth and Roff, 171.1 miles, is $140.30. It also shows where the equal charges apply between the points; for instance, it is $125.50 for 424.1 miles on the Kansas City-Oklahoma haul, and is $124.20 at 149 miles on the Fort Worth-Oklahoma haul. The rates are almost identical, but the Kansas City shipment is hauled 275 miles further. The remainder of the page is similar in every way. The combination is shown [fol. 316] in the next to the last column. The combination from Kansas City to Roff and from Roff to Fort Worth is $259.80 as against the through rate of $279.45, a difference of $19.65. The through rate is class A, 121.5 cents, minimum weight 23,000 pounds, but since this exhibit was prepared the rate from Kansas City to Fort Worth and North Fort Worth was reduced to $244.00, effective January 1st. The differences shown under the heading "Excess" would be reduced to that extent, $35.45, but the greatest difference there shown occurs at Pickwick and Narcissa, $33.90.

Turning to page 4 of Exhibit 6, the through rate from Kansas City in conection with the Santa Fe exceeds the lowest combination based on Thackerville by $55.30. However, on the map exhibit there is shown a rate of $128.50 from Kansas City to Texarkana and of $89.70 from Texarkana to Fort Worth, making a combination rate on Texarkana of $218.20, which is lower than the Thackerville combination, but I understand that the K. C. S. has published a through rule [rate?] and the shipments are moving by K. C. S. and Texarkana on that combination. Where I have referred to half-way points on the map, that is based on mileage, the point approximately half way between Kansas City or Wichita and Fort Worth. The dead-lines are where the rates meet, approximately; thus, at Pauls Valley the Kansas City rate is $122.50 for 420 miles while the Fort Worth rate is $124.20 for 146 miles. Where the half-way lines are shown I show the rates from both Kansas City and Wichita and from Fort Worth; thus, Norman on the Santa Fe is half way between Wichita and Fort Worth, 189 miles from Wichita $85.50 and 184 miles from Fort Worth, $142.60. The dead-lines are explained in the lower part of the map.

Exhibit 5 also shows several examples of fourth section [fol. 317] violations, that is, of the long-and-short haul clause. These we have explained here are violations of the intermediates clause. One instance occurs on the Santa Fe Panhandle lines at Woodward. The Kansas City rate is $116.50, but come across the line into Texas and it is $117.50. There are a few others there to be explained.

Exhibit 7 shows the through rate on horses and mules from Omaha, Neb., and points shown under Note 1, to Fort Worth exceeding the sum of intermediate rates based on the points shown, applicable via the C., B. & Q. and M., K. & T. That exhibit is similar to the preceding exhibit showing the rates from Kansas City and Wichita, except it shows the violation of the fourth section where the combinations of locals are lower than the through rates, which have not been reduced from Omaha except for the general 10 per cent reduction. It would not make a very material difference, as the greatest excess of the through rate over the combination is $30.13 at Muskogee.

As to whether the through rate of $244.00 to Kansas City mentioned by me, which is based on the Russell Creek

combination, that became effective on January 1st at the same time the general 10 per cent reduction was made, and I am not clear as to whether the 10 per cent reduction is to be applied thereto or not. As my Exhibit 6 shows, the combination is $244.10—they dropped the 10 cents, which the General Freight Agent of the M., K. & T. wrote me had been published in accordance with our informal complaint with a view of seeking authority from this Commission to refund on that basis. That reduced rate applies via all lines in the committee tariff, although the combination via the Santa Fe on Thackerville is much less. The 10 per cent reduction applies on the factors from Kansas [fol. 318] City to Russell Creek and from Russell Creek to Fort Worth, so that if it is not applied on the $244.00 rate there is another fourth section violation to the extent that the combination is lower than the through rate.

The establishment of this $244.00 rate from Kansas City also creates fourth section violations at every point in Kansas south to the Oklahoma state line, because those points must pay the class A rate, $279.45. Effective January 31st, I believe, this rate has been made applicable from Wichita and of course that creates the same fourth section violations between Wichita and the Oklahoma state line, because those points must pay the Kansas City class A rate, $279.45. There are instances where the combination of locals over the Oklahoma intermediate points will produce a lower rate than $244.00 from Wichita. For example, the combination via the Santa Fe on Philocco is $215.85 and on Thackerville it is $181.10. That is $62.90 less than the $244.00 rate, if the 10 per cent is not deducted and before January 1st the excess was $98.35.

There is another point I want to mention. At the bottom of the Kansas City rate column you find the first station in Texas, with the mileage and the rate, and it shows the jump in the rate in crossing the Red River. Thus, the rate from Kansas City to Pickwick is $134.00, but to cross the river it cost $145.45 more—more than 100 per cent for a move of 8.2 miles.

Exhibit 8 shows that the rates on horses and mules from Coffeeville and Ft. Scott, Kan. and from Joplin and Kansas City, Mo., to Fort Worth, exceed the combination of locals based on points shown on the lines named on the title page. This exhibit is identical with Exhibit 6 except

[fol. 319] that different points of origin and different roads are used, although in making my notations I have not gone as far as I did on Exhibit 6. The combinations are lower than the through rates in all instances except that over the K., O. & G., on the last page, some of the combinations are not less than the through rates, due to the fact that that is a circuitous route and the Fort Worth-K., O. & G. points rate takes the two-line rate; it increases our rate on the south end considerably. The 35 per cent increase has not been included on the first two pages, and that will increase the excess accordingly.

Exhibits 6 and 8 serve to illustrate that, with the exceptions mentioned and except on the line of the K. C., M. & O., which also is due to the two-line rate applying from Fort Worth, there is no combination anywhere in Oklahoma that is not less than the through rate.

Exhibit 9 shows the through rates on horses and mules at Forth Worth exceeding the combination of locals, with the northbound and southbound rates compared. This merely shows in a condensed form the information in Exhibits 6 and 8, but specifies the points where the greatest difference occurs. On the last line of the second part, Ashdown, Ark., the combination on Texarkana is $148.85 less than the through rate. Also, in several instances, the northbound combinations under "Excess N. B." are less than the through rates, the difference in the Ashdown rate being $55.70 northbound, as the northbound rates are not the same as the southbound rates. From Forth Worth Ashdown takes the rate of 73 cents applying to the Little Rock-Fort Smith group, making the through rate from Fort Worth via Ashdown $167.90. From the Little Rock-Ft. Smith territory to Fort Worth the rate would be $114.50, class A $261.05, against $167.90 in the reverse direction.

[fol. 320] Exhibit 10 shows rates on horses and mules between Oklahoma and Kansas points published by the various individual lines as shown in comparison with the Shreveport scale. The percentage relation is shown and it will be noted that these rates are considerably lower than the Shreveport scale. In 62 I. C. C. 166 the Commission prescribed the Shreveport scale for application on hauls from Kansas City and Oklahoma.

Exhibit 11 shows the relative earnings in cents per mile on horses and mules at Oklahoma half-way points shown

on Exhibit 5. Taking Cambridge on the K. C., M. & O., the Wichita-Cambridge haul earns 40.4 cents per car-mile and the Fort Worth-Cambridge haul earns 76 cents, using 23,000 pounds loading except on Oklahoma interstate. At Bliss on the Santa Fe, half way between Kansas City and Fort Worth, the Kansas City haul earns 30.9 cents and the Fort Worth haul 57.7 cents. At Walkers, Ark., on the Frisco, the Kansas City haul earns 27.5 cents; the haul from Walkers to Fort Worth earns 82.7 cents and from Fort Worth to Walkers it is 49.7 cents, based on the actual rates southbound and northbound.

In Exhibit 12 are shown the rates on horses and mules between Fort Worth and various points and between other markets and the same points, also between Fort Worth and such other markets. Taking the first item, Kansas City to Kinder, La., the rate is $154.00 for 754 miles. From Kansas City to Forth Worth, 506 miles, it is $279.45. From Fort Worth to Kinder, 416 miles, it is $192.05. The rate to Kansas City is the same as to Kinder. This $192.05 from Fort Worth to Kinder is 124.6 per cent of the Kansas City-Kinder rate of $154.00, but the Fort Worth-Kinder mileage, 416 miles, is only 55.2 per cent of the Kansas City-Kinder mileage of 754. Taking Kansas City to Beaumont, 769 miles, the rate is $154.00; from [fol. 321] Kansas City to Fort Worth, 506 miles, the rate is $279.45; and from Fort Worth to Beaumont, 350 miles, it is $111.55. Based on the Shreveport scale, the Fort Worth-Kansas City rate, 506 miles, would be $192.05. Thus, the Fort Worth-Beaumont rate of $111.50 is 72.4 per cent of the Kansas City-Beaumont rate of $154.00, while the Fort Worth-Beaumont mileage is 46.7 per cent of the Kansas City-Beaumont mileage.

The rates shown at the bottom of the page from Cairo out to El Paso are practically all applicable via Fort Worth. The rate from Cairo to Fort Worth is $307.05, so the rate from Cairo to El Paso of $247.25, which applies through Fort Worth, creates a fourth section violation. These rates are not published as proportional rates, but apply from all these points territorially; all of these territorial rates are class A like Cairo, St. Louis, Kansas City, New Orleans and Little Rock.

Exhibit 13 shows the excessive jumps in the rates on horses and mules from Fort Worth to Oklahoma border

points, together with a comparison of the Shreveport scale. For instance, the rate from Fort Worth to Stephens, Tex., is $127.65, but across the line in Oklahoma at Guymon the rate is $279.45, a jump of $151.80, or 119 per cent, for an additional distance of 28 miles. The remainder of the exhibit is the same, the first-named station being in Texas and the second in Oklahoma. The Shreveport rate is shown as the last rate in each block. It illustrates the excessive increases and the difficulties under which the Fort Worth shipper has to get his shipments out of Texas, the same as the other exhibits illustrate to a greater extent the same disabilities coming into Texas. A shipper would probably ship up to Stephens and drive that 28 miles, but they can not do that at all places on the Red River.

[fol. 322] Exhibit 14 shows the relative earnings in cents per car, and on horses and mules at the Oklahoma dead line. They are each shown on the map, also at the Texas border points and at the first point in Texas. Taking Wichita to Terral on the Rock Island, 275 miles, for illustration, the earnings are 34 cents per car-mile. Step across the river to Ringgold, Texas, and the earnings jump to 99.8. In the reverse direction the earnings are 111.2 cents per car-mile from Fort Worth to Terral, but the Wichita-Terral shipment earns only 34 cents. The Fort Worth-Overbrook movement, just below that, earns 107.6 cents, while the Wichita-Overbrook movement earns 33.4 cents.

At the bottom I have shown in pencil what Wichita can move these shipments into Oklahoma territory at equal distances that Fort Worth can. For instance, Fort Worth-Terral, 91 miles, the earnings are 111.2 cents; Wichita can move that shipment into Oklahoma and pay 65.4 cents. For 171 miles, illustrated by the Fort Worth to Roff movement, the earnings are 82.1 cents; the Wichita-Roff haul earns 47.7 cents. For 195 miles the Fort Worth-Elmer movement earns 81.4 cents; on the Wichita-Elmer movement they charge only 41.4 cents. The "&" there indicates that the freight rates apply between. The Fort Worth-Pauls Valley haul is 25.1 cents while the Kansas City-Pauls Valley haul is 29.2 cents, the Fort Worth haul being 281.1 per cent of the Kansas City-Pauls Valley haul.

Exhibit 15 is a statement showing discrimination against Fort Worth in favor of other markets. It shows where

Kansas City and Wichita can ship from points nearer to Fort Worth to Kansas City and Wichita and reship to a point opposite and nearer Fort Worth than Kansas City [fol. 323] and Wichita at the combination cheaper than Fort Worth can ship from and to the same points through Fort Worth on the Fort Worth combination, although Kansas City and Wichita are out of line and Fort Worth is nearer in line. From Erick, Okla., on the east and west line of the Rock Island, for instance, Kansas City and Wichita can ship to their headquarters, there assemble and cull these animals, pay the local rate, and then reship down here to Shreveport, both Erick and Shreveport being nearer to Fort Worth than Kansas City, an aggregegate mileage of 1,072 miles, for $255.50; it costs Fort Worth to make the same shipment from Erick to Fort Worth and then to Shreveport, 560 miles, $266.80. While Fort Worth is almost on a direct line between Erick and Shreveport, Kansas City is several hundred miles out of line. In other items there shown they are practically the same thing.

I have only one illustration as to Wichita, and that is Thackerville shipping to Little Rock, where Wichita would be considerably more out of line than Fort Worth. Wichita can come down to the north bank of the Red River there at Thackerville, buy their animals, ship them to Wichita and concentrate or cull and reship to Little Rock, an aggregate of 785 miles, for $235.50. To ship from Thackerville to Fort Worth and thence to Little Rock, 421 miles, would cost $346.15, while Fort Worth is just slightly out of line, you might say, 75 miles, the distance from Fort Worth to Thackerville. In one instance there Kansas City can come down into Texas at Amarillo.

Exhibit 16 is a statement of rates on horses and mules to Fort Worth versus rates from Fort Worth, the inbound and outbound rates compared. It shows a difference in the [fol. 324] Kansas City rate of $87.40, or 45.5 per cent. The others are similar and show the discrepancy between the north and the southbound rates. These are just a few examples, and I might say that these southbound rates are territorial class A rates and apply from all points in Kansas City-St. Louis territory, Little Rock, New Orleans. Northbound they are specific commodity rates, also apply territorially to the points on which the southbound rates apply, so it covers practically the whole country.

Exhibit 17 is a statement showing rates on horses and mules which are less than or the same as the Shreveport scale. You will note there are quite a number of mileage scales there applying throughout the Southwest. Where it is shown between Louisiana and Louisiana, that applies west of the Mississippi River and is the Shreveport basis resulting from the Natchez case. We have a separate exhibit as to New Mexico and Arizona. The rates in Arkansas are lower than between points in Texas, and they are also lower between Oklahoma, Kansas, and Nebraska. Out there in Colorado there are some rates that are lower than the Shreveport scale, and they are lower between Missouri and Oklahoma. Texas is surrounded by rates that are lower mile for mile than those applying between points in Texas, or between Oklahoma and Texas, or between Shreveport and Texas. We have rates lower than the Shreveport scale coming down the east side of Texas on the K. C. S., and we have rates lower than the Shreveport scale coming down the Rock Island and Santa Fe through the Panhandle. All these rates reaching down from Missouri and Kansas through Oklahoma to the Red River are considerably lower than the Shreveport scale. We have a schedule on the Southern Pacific from Arizona and New Mexico to the Texas border that is less than the Shreveport [fol. 325] scale. In other words, a Fort Worth shipper is hedged in on both sides coming and going by rates less than the Shreveport scale.

(Exhibits 1 to 17, witness Pelton, were duly received in evidence.)

Mr. Pelton: It will take a couple of hours for me to get through, and as we have a number of witnesses here who are business men and don't like to be here all day, if there is no objection may we hear those and let them go?

Examiner Oliver: Very well; call your first witness.

J. M. Yount was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination.

By Mr. Pelton:

I am in the horse and mule commission business at Fort Worth in the firm name of Burnett & Yount Horse and

Mule Company, with which firm I have been connected for two years; I have been in Fort Worth for seven or eight years, and was formerly with the Ross Brothers Horse and Mule Company. My business has been affected by the rates, both in shipping in and in shipping out, the rates are too high. I have knowledge where a shipper has advised me he could not ship to me at Fort Worth on account of unfavorable freight rates there, but I don't know whether he shipped to other points or not; they just don't make that shipment, but I have had men tell me they could not ship here on account of the freight rates. I know men that have shipped here who have quit shipping; they are still horse and mule dealers but I don't know that they are shipping any place else. I handled some commission business, and on such shipments we paid the freight and when we sold [fol. 326] their stock we charged the shippers with all expenses, freight and feed and such as that. I also handle quite a lot of business on my own account on which I pay and bear the freight charges, that is, for account of myself and my firm; I employ a bookkeeper to keep a complete record of these accounts and sales, how the money is handled, the proceeds, etc.

At this time, our principal competitor is the market at Wichita, Kans.; that has been the situation for two years, I believe. We don't meet any competition at Kansas City shipping in, but we do in shipping to Louisiana and that country. Our buyers are men that come here and buy, shipping to Louisiana; they go to Kansas City on account of the freight rate, that is what they tell me, and don't buy from Fort Worth on account of the freight rate. I have competition with Oklahoma City, but not very much because as I understand it they don't do very much business there. Where I have handled shipments for other parties I do not know of any instances where the charges have not been charged back to them; the records my bookkeeper has made show who is the actual party at interest.

Cross-examination.

By Mr. Wren:

It would be a guess with me as to the volume of the horse and mule business I transact; the bookkeeper can give the information much better than I can. We get most of our

supply from Oklahoma and Kansas, principally Oklahoma this year, I think. Our shipments have been mostly to Texas points this fall. In our business we send men out to buy stock; we have bought at Wichita and the larger markets, but not lately; the larger volume of our business comes from the smaller rural districts in Oklahoma and [fol. 327] Texas, some of it from Kansas—we get them from all over. Comparing 1920 and 1919, or 1921 and 1920, the horse and mule business has fallen off a great lot.

Examination.

By Examiner Oliver:

The Burnett and Yount Horse and Mule Company is a partnership composed of S. Q. Burnett, S. E. Ross, and myself. We meet the competition of Wichita principally from Kansas and I guess Oklahoma. In selling horses, Kansas City is quite a competitor. We don't sell in Kansas at all; we should sell and used to sell in Louisiana but are not doing much of it now; our selling pointsare in Texas this year. In prior years we have sold both in Louisiana and in Mississippi.

Cross-examinaton.

By Mr. Wren:

I think the market conditions have had a good deal to do with the falling off in our business; the market is much lower now than it has been for the last several years. As to my statement that we have been prevented from selling horses and mules at certain points because of the high freight rates, we stopped shipping to New Orleans, for example, on that account. The last shipment we made to New Orleans was last fall, I think, about September; I have not shipped there since then and don't know whether there has been any increase in the freight rate from Fort Worth to New Orleans since that time. I don't know of any points where I formerly bought stock and shipped to Fort Worth where I am now prevented from shipping on account of high freight rates because I have not been out buying any stock; I am now doing most of my personal buying on the market here.

Re-direct examination

By Mr. Pelton:

As to whether I have ever met any direct competition at New Orleans with shipments from other points, I was there [fol. 328] during the summer, June or July, with three loads from Oklahoma and one load from here, and my freight and feed charges from Oklahoma were $390.00, as I remember, and I met some man in the same market from Iowa, but I do not personally know what his freight and feed charges were. Our shipments from Kansas points have declined out of proportion to our shipments from other points in other years; I don't know just what is the reason for that, but they claim it is the freight rates, that is what they say. Fort Worth is a much larger market than the market at either Oklahoma City or Wichita, and I should think that would naturally tend to bring shippers to Fort Worth in preference to those markets.

H. M. White was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination.

By Mr. Pelton:

I am employed by the Burnett and Yount Horse and Mule Company as bookkeeper, and in that capacity am familiar with the handling of shipments to and from them at all points. Shipments on commission are handled in the usual way, all expenses, commission, etc., being charged back to the shipper. The Burnett and Yount Horse and Mule Company paid and bore the freight charges on all shipments made to them. Exhibit 18 is a list of all shipments received by that firm, specifying the date, the owners and their addresses, the car numbers, etc. I also keep books for Sam E. Ross, H. P. Walker, and Pete Yount; they carry separate accounts on the books. As to the other shippers listed in Exhibit 18, I know that these charges were charged back to them in each individual case.

[fol. 329] (Exhibit 18, witness White, was duly received in evidence.)

Cross-examination.

By Mr. Wren):

From my knowledge of the business in keeping the books, I would say the volume of business done by my concern, as between 1921 and 1920, has decreased a little more than 50 per cent. I am not posted on values, but my books show the amount realized and the amount paid, it is around 50 per cent. As between 1919 and 1920, there was about a 25 per cent decrease. The remittances I make on commission sales are to points in Texas and Oklahoma, some in Kansas. The shipments made by my firm out of this market have gone to Texas principally for the last two years; prior to that time it was to Louisiana, Mississippi, Georgia and Florida. We have a few shipments from Nebraska, but there is no movement at all, practically none, to Nebraska and Missouri and up in there. It is very seldom that we have any shipment from this market to Kansas City or St. Louis either.

Re-direct examination.

By Mr. Pelton:

The mere fact that I forward remittances to certain points does not necessarily mean that the shipments came from there. As to my statement that two years ago we made considerable shipments to Louisiana, we have made a few since. As to why we don't ship as much there now as we did, to a certain extent that is due to the natural falling off in business, but another reason is the dealers and buyers in Louisiana tell us the freight rates are too high from Fort Worth to their territory, that it is cheaper to ship from other points.

[fol. 330] W. O. Rominger was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination.

By Mr. Pelton:

I am in the horse and mule business under the firm name of W. O. Rominger and Company, a partnership composed of W. O. and C. O. Rominger. We have been in that business at Fort Worth about 18 years, and my brother and I formerly had the controlling stock ownership of the Stockyards Horse and Mule Commission Company. As to whether our business has been affected by the high freight rates in the last two years, I don't know that it has been so affected any more than any other business; they have all been kicking about the high freight rates. I have heard complaints about the rates being more favorable to other points, but it never affected us very much; we never paid any attention to it; we shipped just the same. We don't run a commission business; everything handled by W. O. Rominger and Company was their own individual business, and they paid and bore all freight charges on those shipments. We meet our principal competition from the northern markets, they are all competitors. During the last two years our strongest competitor has been Wichita, Kans. Kansas City hasn't bothered us much recently; and Oklahoma City has never been much in the way. Fort Worth has been a larger market than Oklahoma City. Wichita recently has been considered as a larger market, but two years ago Fort Worth was the largest. I don't know that Wichita is the largest at present but I have understood recently that they are; I never go there and I couldn't say. [fol. 331] I formerly did a great deal of business shipping to Louisiana points, but I haven't had any there during the last year; that is, last year I don't think more than three or four loads that I shipped went to Louisiana. The general depression caused us to lose that business; I left, too. The only complaints on freight rates that I nearly always had was on this side of the Mississippi River, points in Louisiana, and beyond the Mississippi River; you see we had a Mississippi River rate that was lower than the freight on this side. When our business fell off over there, I don't think they got many horses and mules anywhere, but there is a great kick about the freight rates from here. We had a branch at Vicksburg, Miss., and we ship principally there direct. I don't know

what the freight was from Kansas City to Vicksburg. A few years back, Kansas and St. Louis could ship down into Louisiana for less money than we could ship there; they always complained of that rate. We have for several years had a low rate to Mississippi; we could ship to Vicksburg for less than you could ship between Shreveport and Vicksburg; a few miles beyond Vicksburg there would probably be a third added to the freight for a few miles. We had a retail market at Vicksburg; we had our own barns and retailed all over the country there, right out from Vicksburg, Louisiana and Mississippi, both sides of the river. Out of Vicksburg we hardly ever sold any further away than 25 or 30 or 40 miles on this side of the river. Exhibit 19 is a statement our bookkeeper has complied of shipments made to W. O. Rominger and Company at Fort Worth.

(Exhibit 19, witness Rominger, was duly received in evidence.)

[fol. 332] Cross-examination.

By Mr. Wren:

We still maintain a branch at Vicksburg and have made a few shipments there lately. It is true that the volume of the general horse and mule business all over the country, and particularly in this section has decreased considerably in the last year. I attribute the falling off in the shipments we have made to Louisiana to general business conditions and the depression. There has always been a market at Wichita, but it has been a real competitor to Fort Worth only during the last two years. I am not familiar with the comparative figures of the two markets. I have just seen the buyers going through here and going up there and coming back with the stock. We buy our stock principally in California, Nebraska, Oklahoma, Kansas, and Texas, some few in Arizona and New Mexico. We sell them principally on the Fort Worth market and at our Vicksburg market. I have nothing to do with the shipping out of the animals that we sell here in Fort Worth.

As between 1921 and 1920, there has been about a 25 per cent decrease of our business, possibly a little more than that. Prices are about cut in two; since March, 1920, prices have gradually gone down; they held up until about the

10th of March, 1920, and it was after that that our business decreased. As to whether I attribute the decrease in our business to the freight rate situation, in former years we had a big trade from Mississippi and Georgia, as far east as Georgia and Alabama, and some from Florida, but they quit coming on account of the freight rate. They are still buying largely in those markets; they buy on the St. Louis market principally; South Carolina gets a great deal from Wichita. When I formerly got business in that territory, it is true that the St. Louis and Kansas City markets could [fol. 333] sell down there cheaper than the Fort Worth market; from St. Louis it cost them about $110.00 and it would cost them from $50.00 to $75.00 more per car from here. The last two or three years we have sold scarcely anything east of the Mississippi River. As to the volume of business done on the market here in horses and mules, there was a big decrease, but I haven't noticed the receipts; I haven't had enough to do to have an interest in it, the fact is that I haven't sold a mule on the Fort Worth market this year, 1921, although I shipped some out on orders.

We have never shipped any stock north except eight or nine years ago, it might have been nine, when I shipped the last stuff to St. Louis and the northern markets. Stock was cheaper here and they could afford to buy them and ship there and get better prices. We shipped to Atlanta that year and had a nice business there. That situation arises more or less on account of an economic condition, there was a shortage in the north and a surplus here, but that didn't last long, probably five or six months, and it does not represent the usual movement. I lay the few sales that we are now making to the general financial condition. In Louisiana and Mississippi, where we had our great outlet, it has been awful hard. Lots of stock that was sold on credit in 1919 has never been paid for yet; I guess 75 per cent of it is still uncollected.

Re-direct examination.

By Mr. Pelton:

If we had to pay a rate of $192.00 a car from Fort Worth to De Ridder, La., in competition with a rate of $142.00 from Kansas City, that might have a deterrent effect on our business down there, as we would have to overcome that

difference of about $2.00 a head. The southern shippers will go to most any of those northern markets, Wichita, [fol. 334] Fort Scott, Kansas City and St. Louis; they come to Fort Worth once in awhile but they are scattering. These Shreveport buyers come to Fort Worth, but I have heard them complain about the freight rates. Lots of them buy in the country, they don't go to the market; a man would have a carload of mules concentrated, and they sometimes buy them, but naturally they would rather come to Fort Worth if we could compete. The reason we can't compete is on account of the high freight rates; I heard them talk about it but I can not recall names. It is because the freight rates from Kansas City, Coffeeville, Joplin, Fort Scott, and so on, are more favorable to those points than they are from Fort Worth. I happen to think of a New Orleans shipper who used to buy a great many horses and mules here, but he quit the market because he said he could get his stock from St. Louis for less money. I wouldn't think it is more natural for those shippers to get their stuff in the northern markets than to come to Fort Worth. We are not shipping any horses and mules from Kansas and Nebraska at all now, although formerly we shipped worlds of them. That is because we haven't had any outlet for them since March, 1920.

Recross-examination.

By Mr. Wren:

At the time we formerly were selling in Louisiana, I knew all along that they could get their animals cheaper from Kansas City and St. Louis than from Fort Worth; the reason they would come to Fort Worth was because they could get the supplies quicker, and times were good then and they paid no attention to a little expense, but they are probably more particular now. On account of economic conditions there is no large buying and selling of stock in Louisiana now that I know of. I have heard of only a few buyers buying from there; there have been a few here lately, but not many like there used to be.

[fol. 335] C. H. Richards was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination.

By Mr. Pelton:

I am and for the past year have been employed as bookkeeper for W. O. Rominger and Company, and for eight or nine years prior thereto I was working with the Stockyards Horse and Mule Company. I know of my personal knowledge that the freight charges on the shipments of horses and mules listed in Exhibit 19 were paid by W. O. Rominger and Company. Exhibit 20 is a statement of the shipments of horses and mules consigned to the Stockyards Horse and Mule Company, and shows the names and addresses of the complainants in this case who paid and bore the freight charges. All of these shipments were made on consignment. The Stockyards Horse and Mule Company was a corporation, although it is not now in existence.

(Exhibit 20, Witness Richards, was duly received in evidence.)

W. R. Ross was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination.

By Mr. Pelton:

I am in the horse and mule business at Fort Worth under the firm name of Ross Brothers Horse and Mule Company, a corporation. I have been in that business in Fort Worth for 17 years, and during all that time have been shipping to and from Fort Worth. Our principal shipping points out of Fort Worth were in Louisiana, Mississippi, and Alabama. We obtain our shipments to Fort Worth from Texas, Oklahoma, Kansas, Nebraska, Colorado, Arizona, New Mexico, and California. The principal competition [fol. 336] we meet is from the northern markets, St. Louis, Kansas City, Grand Island, Neb., and Wichita, Kans. At present and for the past two years Wichita is and has been the strongest competing point, but we meet some competition at Oklahoma City. I know of specific instances where our former customers have discontinued shipping to Fort Worth in the last few years, among whom are the follow-

ing: Green Brothers, Moline, Kans.; C. W. Deardorf, Hastings, Neb.; W. B. Lattin, Osborne, Kans.; D. C. Trigg, Tucumcari, N. M. I know why some of them have quit coming to Fort Worth, it is on account of the freight rates.

We still make a few shipments to Louisiana but not as many as heretofore, and that is for the same reason, the freight rates. I have personal information that our former customers in Louisiana are now going to the northern markets. Our principal sales, outbound shipments, are now to points in Texas; we can't get out of Texas, as we can not compete with the northern markets on freight rates. If we had to pay $101.50 on a car of horses and mules to Terral, Okla., and Wichita had to pay only $93.50 on the same size car, we would be materially damaged by that fact. We have made very few shipments to Oklahoma, but I don't remember of any lately.

Exhibit 21, under the heading of Claimants, contains a list of parties who, with the exception of D. C. Trigg, I know are regularly engaged in the horse and mule business. Where the shipments are shown as Ross Brothers, that was the individual business of the firm, which paid and ultimately bore the charges thereon.

(Exhibit 21, witness Ross, was duly received in evidence.)

[fol. 337] Cross-examination.

By Mr. Wren:

I know where Terrell is, it is just across the line of Texas and is only a big, wide place in the road; I don't believe I ever made a shipment there, and I don't know of anybody that ever bought and sold any horses at Terrell, although I bought some horses and mules at Ryan, just about the same thing. The great majority of the shipments shown on this statement here (Exhibit 21) moved from Kansas and Oklahoma, with some from Nebraska and a few from Colorado. The competition at Wichita is of comparatively recent development; I don't know how the volume of the horse and mule business in Fort Worth in 1920 compared with that of Wichita; I don't pay any attention to it. Market conditions being equal, it is reasonable to assume that a shipment from Kansas will move to Wichita in preference to Fort Worth, the haul being shorter and thte same equality of market is preferable.

Our purchases even in Texas are not now as great as they used to be. It is true that when we were getting shipments from Nebraska, for instance, a great many of those animals were being sold right in this state at that time, but not all of them; the demand for the animals in his state is nothing like as great as it was at that time. We ceased making shipments into Louisiana to amount to anything since about March or April of 1920. I think it is true that before that time the buyers in Louisiana could purchase their horses and mules in the Kansas City market and ship to Louisiana on a cheaper freight rate than it would have been shipping from Fort Worth; they bought here because the times were good and they didn't notice it. Their buying now, where they are buying, is nothing like in as great quantities as it was then; the volume of business down there has gone down considerably, just as it has anywhere else.

[fol. 338] Redirect examination.

By Mr. Pelton:

As to our business beginning to decline seriously in Louisiana about March, 1920, I know very well that on August 26, 1920, four or five months afterwards, the rates were increased, though I don't know that it was exactly the amount of 35 per cent. I don't know that that increase served to broaden the difference in the rates from the northern markets to Louisiana and from the Fort Worth market to Louisiana to such an extent that we could not do business down there at all, but we couldn't do as much as before, though it would virtually shut us out of that market.

John C. Hicks was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination.

By Mr. Pelton:

I live at Fort Worth, Texas, and am employed by Ross Brothers Horse and Mule Company as bookkeeper. I know of my own personal knowledge that the freight charges on those shipments contained in the list that has been offered

in evidence were charged back to the parties in the column headed "Claimants," and so far as I know they paid and ultimately bore the freight charges.

Examination.

By Examiner Oliver:

This statement (Exhibit 21) is simply a list of the consignees where we charged back the freight charges; Ross Brothers Horse and Mule Company paid all those freight charges but the freight charges on shipments to that concern were not charged back to anyone else.

B. D. Pelton, being recalled as a witness, testified further in substance as follows:

[fol. 339] Direct examination.

By Mr. Scrivner:

Exhibit 22 contains comparisons of horse and mule rates between Texas and Oklahoma with the rates between Missouri, Kansas, and Oklahoma, also the Shreveport scale, showing the ratio to the Oklahoma-Texas scale. It shows a comparison of the scales applying between Kansas, Missouri, and Oklahoma points to the Oklahoma scale; for instance, the M. K. & T. scale for 10 miles is 81.6 per cent of the Oklahoma-Texas rate, and in the extreme right-hand column, it shows that the Oklahoma-Texas scale for the distance of 10 miles is 129.2 per cent of the Shreveport scale, and so on throughout the scale to 450 miles. For all distances beyond 10 miles the Shreveport scale is lower than the Texas-Oklahoma scale; it runs down to 58.2 per cent but I haven't the approximate average. The rate of progression is greater; the scale of rates is shorter except that the K. C. M. & O. and the Santa Fe schedule is the same as the M. K. & T. Those are the scales on which the combinations are based into Oklahoma points.

Exhibit 23 is a statement showing the rates on horses and mules between points in New Mexico and between Arizona points, state and interstate, compared with the Shreveport scale, and is self-explanatory. It shows those rates out in the desert and sparsely settled country are very much

lower than the Shreveport scale; that will cover the territory from California to Texas, which extends 780 miles. For the first distance shown in the Shreveport scale, 10 miles, the Arizona intrastate rate is $19.00 compared with the Shreveport scale, $35.65, and the New Mexico scale for the same distance is $24.00. The Arizona interstate scale runs very close to the intrastate scale. The New Mexico scale is considerably higher than either of the Arizona [fol. 340] scales, but I do not find in a single instance where any of those rates in Arizona or New Mexico, state or interstate, are as high as the Shreveport scale, except that they are a little bit higher when you get down to a long distance.

Exhibit 24 is an outline of the Shreveport scale as extended. This does not mean the exact Shreveport scale was extended according to this, but scales have been fixed by the Commission in these various cases which are the same as or less than the Shreveport scale. You notice it extends all over the Southwest and all through the southeastern territory. In the Hudson Mule case, 63 I. C. C. 6, the Commission established a schedule of rates on horses and mules considerably less than the Shreveport scale. I do not mean that the actual Shreveport horse and mule scale has been extended into all of this territory shown here, but a scale the same as or less than the Shreveport scale was prescribed, as in the Ruston case and the second Natchez case, 52 I. C. C. 558, which applied between Natchez and western Louisiana, and the actual Shreveport scale has been published in the tariffs from Texas to Natchez.

Exhibit 25 is a statement of the rates on cattle and hogs from Kansas City and on hogs from Sioux Falls, S. D., to Oklahoma City, found reasonable in 62 I. C. C. 171, as compared to the Shreveport scale. It will be noted that the Commission has fixed a rate of 43 cents on beef cattle, and under the Shreveport scale is 47.5 cents for the same distance, 409 miles. On hogs, both single and double deck, it is considerably less than the Shreveport scale; the Sioux Falls rate for 780 miles exceeds the Shreveport scale for that distance.

Exhibit 26 shows rates on hogs, carloads, from South [fol. 341] St. Joseph and Kansas City to Fort Worth prescribed in Docket No. 11522, 62 I. C. C. 166, compared with the Shreveport scale and with the northbound rates published by the carriers some years back. The South St.

Joseph rate for 566 miles, single-line, double-deck, is 51.5 cents, and the Shreveport scale for the same distance is 54 cents. All the rates from Kansas City are identical throughout with the Shreveport rate. As is usual, the Kansas City rates are made applicable to South St. Joseph, so that the longer distance of 60 miles additional makes the rate from St. Joseph lower than the Shreveport scale. In addition to the comparison of the Shreveport scale, this exhibit simply indicates that the Commission recognized the scale prescribed in the Shreveport case as being reasonable from Kansas City to Fort Worth on such commodities, and the Commission said in that case that the Shreveport scale between Kansas City and Fort Worth should apply from St. Joseph, as that point usually takes the Kansas City rates; there would be no dissimilar transportation conditions.

Exhibit 27 shows the rate to Oklahoma City ordered by the Commission in Docket Nos. 11077 and 11240, 62 I. C. C. 171, plus the rate to North Fort Worth, also the present rates and rates under the Shreveport scale for the same distance. It further shows the rate on beef cattle northbound as compared with these rates and the combination. The rate from Kansas City to Oklahoma City on beef cattle, single-line, 384 miles, is 43 cents. The rate applicable under the Shreveport scale for the same distance, single-line, is 46 cents, showing that the Commission recognized that cheaper rates should apply in that territory than the Shreveport scale. I believe the exhibit throughout shows practically the same thing on hauls, single and double deck, [fol. 342] single and joint line. All livestock rates except on horses and mules between Oklahoma points and Fort Worth are the same as the Shreveport scale established by the Railroad Administration.

Exhibit 28 quotes from five decisions of the Commission its views as to transportation conditions throughout southwestern territory, and in all these decisions the finding is made that there are no substantially different transportation conditions.

Exhibit 29 shows earnings on horses and mules found reasonable by the Commission in Wichita Board of Commerce v. Director General, 60 I. C. C. 542, applicable from Kansas City and Wichita to Memphis, Tenn. The rate of $81.00 from Kansas City to Memphis, 484 miles, plus 35 per cent under Ex Parte 74, makes a rate of $109.50, which

would yield 22.6 cents per car-mile. The rate from Wichita to Memphis, 549 miles, is $91.68, plus 35 per cent under Ex Parte 74, but the Commission found that the Wichita rate should not exceed the Kansas City rate by more than $10.00, and on that basis the Wichita rate of $119.50 would yield 21.8 cents per car-mile. For the same distance the Shreveport scale would yield with the Kansas City mileage a rate of 54 cents, earning 25.7 cents per car-mile. The Wichita-Memphis haul of 549 miles would earn 23.3 cents per car-mile, showing that those rates found reasonable by the Commission were considerably less than the Shreveport scale.

Exhibit 4 shows the fourth section violations in southwestern territory, not all of them but just a few. This exhibit should be taken in connection with Exhibits 6, 7, and 8. Turning to Exhibit 5, the map, it will be noted that the line between the points in the first item on Exhibit 30, Talmage and Abilene in northern Kansas, is the line between [fol. 343] Kansas City territory and Kansas group 1 territory. There are no through rates on horses and mules from points in Kansas north and west of this line, including Kansas groups 1, 2, and 3, so that the combination of intermediate rates must be charged in practically all cases; except possibly a few in extreme western Kansas, the combinations from those points based on Oklahoma, especially from group 1, are considerably less than the Kansas City territorial class A rates which apply from Abilene and all points in Kansas City territory. The Talmage business and everything north of that in Kansas must pass through Abilene, entirely through Kansas City territory, all of which takes a higher rate than Talmage. The same situation exists over here on the Rock Island at Turon and Langdon.

In Exhibit 30 the actual figures are brought out showing this difference. For instance, Talmage pays a combination on Thackerville of $231.60, while Abilene, a nearer point through which the traffic moves, must pay $259.45, a difference of $48.00. At every point on that territorial line there the same conditions of course exist.

As a result of our informal complaint, a rate of $244.00 was established on January 1st from Kansas City to Fort Worth, based on the Russell Creek, Okla., combination, it being necessary to publish the rate before the M., K. & T.

could make application to the Commission to make reparation on that basis. Since then, effective January 31st, I think, the same rate has been established from Wichita. The establishment of this rate of $244.00, while it created the fourth section violations at intermediate points in Kansas previously mentioned, did not serve the purpose of removing the intermediate clause violations in Oklahoma for the reason that the sum of the intermediate rates via the [fol. 344] Santa Fe based on Thackerville is less than $244.00. This exhibit also points out quite a number of (but not all) long-and-short-haul violations which are easily located on the map.

Exhibit 31 shows the excessive increases in rates on horses and mules (the other kind of livestock may be disregarded). The exhibit was made some time ago, and as there have been some changes in the first five items since then they may be disregarded also. Taking the Kansas City-Texhoma situation, Texhoma, Okla., and Stevens, Tex., are on opposite sides of the Texas-Oklahoma line 10 miles apart, the distance from Kansas City to Texhoma being 473.4 miles and from Kansas City to Stevens 484.3 miles. The Kansas City rate to Texhoma is $131.45, and from Kansas Cit yto Stevens the rate is $307.05, an increase for the 10 miles of $175.60, or 133.6 per cent. Follow the Oklahoma-Arkansas-Louisiana border all around the state of Texas, you will find the same situation to a greater or less extent.

The St. Louis-Texhoma-Stevens increase is 146 per cent. You will note at fully half or more of these crossing points the increase of rates for the move across the Texas border is more than 100 per cent and in practically all cases the increase is more than $100.00. I see only one place where they could cross into Texas with a car of horses and mules without an increase of more than 100 per cent, and the greatest distance in crossing the border from the first station outside to the first station inside seems to be between Lake Charles, La., and Sabine, Tex., 31 miles. A little different situation exists at Waskom, which enjoys the Shreveport rate from Kansas City of $128.50. They can get into the state there for 22 miles, but the next station west of Waskom takes the Kansas City territorial rate of $279.45, [fol. 345] or considerably more than 100 per cent. Waskom pays class A rates on St. Louis business, however, and you

can not get in there from St. Louis without the great increase. There are so many fourth section violations that we can not put them all in.

On the map exhibit, attention is directed to the fact that to Paris, Texas, the St. Louis rate is $307.05 and the Kansas City rate is $279.45. At every point just south of the Red River those same rates apply except for the $244.00 rate that has been established. At the first station north of the river you will find the rates applying from St. Louis and Kansas City and other points, and by comparing the rates north of the river with those south thereof you can tell just how much it will cost to ship a car across the river, that is, to get into Texas.

Exhibit 32 shows the rates on horses and mules from Oklahoma interior points to Oklahoma-Texas border points in Oklahoma and from Oklahoma interior points to Texas-border points in Texas, and from equidistant Texas points to the same border points in Oklahoma; this shows the excessive jumps on crossing the border southbound and the high ratio of the interstate to the Oklahoma intrastate rates. We also show the Shreveport scale and the ratio thereof to the Oklahoma-Texas interstate rates and the Oklahoma intrastate rates. For instance, from Forgan, Okla., to Devol, Okla., 284 miles, the rate is $125.14, but across the river the rate from Forgan to Burkburnett is $160.45, a jump of $38.97 for 6.9 miles, or 31.1 per cent. The northbound movement from a point in Texas to Burkburnett, 284.2 miles, carries a rate of $101.20. For a mileage of 291.1 the Oklahoma-Texas interstate basis would be $164.45, a jump of $63.25 for the same 6.9 miles, or 62.5 per cent.

[fol. 346] Exhibit 33 shows rates on horses and mules between Dodsonville and Wellington from Fort Worth, the present basis being the combination on Hollis, which makes the through rate from Dodsonville 83.5 cents for 300 miles and from Wellington 90.5 cents. The rates apply in both directions. It shows a comparison below of several of the mileages shown, the Oklahoma intrastate, the Texas intrastate and the Oklahoma-Texas interstate. It also shows the rate compared with the Oklahoma City rate and the Shreveport scale. From the map you will note that Dodsonville and Wellington are just west of the Texas-Oklahoma state line, so traffic to and from those points must pass through Oklahoma.

The Shreveport scale applies throughout Texas, and the intrastate scale which applies in Oklahoma is slightly higher than the Texas or Shreveport. The Oklahoma-Texas interstate scale is still considerably higher than either of the intrastate rates. The Shreveport scale applies on all other livestock in this territory, state and interstate, but I have endeavored to secure the establishment of rates based on the Shreveport scale between Dodsonville and Fort Worth. Attached to this exhibit is a copy of a letter from J. F. Garvin, General Freight Agent of the M., K. & T., the only line that reaches Dodsonville and Wellington, in which he states that they would not put in the through rates on account of creating fourth section violations in Oklahoma, therefore we must pay from Wellington and Dodsonville to Fort Worth a combination of locals where all other livestock and horses and mules from this territory have a through rate. Generally speaking, where the shipments pass through Oklahoma in a movement between Texas points, as from Amarillo to Fort Worth through Oklahoma, the Shreveport scale applies, and in all cases over in [fol. 347] Louisiana I understand that the decision of the Commission requires that the Shreveport scale should apply where a shipment must move via an interstate route between points in Texas.

Exhibit 34 shows the unreasonable rates and revenue on shipments of horses and mules from interstate points to Texas. These interstate points are approximately the first points beyond the state of Oklahoma; there may be little stations in between, and down in southeastern Arkansas the stations in Arkansas. The purpose is to illustrate the movement of a shipment just across the state of Oklahoma from outside points, together with the earnings, in getting into Texas from a point just beyond Oklahoma. For instance, from Waldron, Kans., the first station on the K. C., M. & O. north of Oklahoma, across the state of Oklahoma to the first station in Texas, Chillicothe, the rate is $279.45 for a distance of 217 miles, the car-mile earnings being 126 cents. On the northbound move from Chillicothe to Waldron the rate is $200.10 with earnings of 92.2 per car-mile. Fort Smith, Ark., and Nash, at the bottom there, you will find the car earnings 193.3.

Exhibit 35 shows rates on horses and mules and cattle in and between Texas, Oklahoma, Kansas, Nebraska, Mis-

souri, Arkansas, Colorado, Louisiana, and New Mexico, as published in the tariffs shown under the notes. It shows a comparison of each schedule with all others, earnings in cents per car and per ton mile, and the ratio of all other horse and mule rates to the Shreveport scale and the percentage of the horse and mule rate to the cattle rate in each individual scale. Thus, on the second page the Shreveport horse and mule rate at 50 miles is 138.4 per cent of the cattle rate, and it goes on down to where at 900 miles the ratio is 100. In the second item on that page, those rates [fol. 348] apply from points in Kansas, Missouri, and Nebraska via the Santa Fe and Rock Island lines down through the Texas panhandle. It will be noted there that the horse and mule rates run down to 88 per cent of the cattle rate; and also that that scale on horses and mules up to 450 miles is considerably less than the Shreveport scale, running down to 84.8 and only reaching at 600 miles the ratio of 106.4 to the Shreveport scale.

The third section of that page is Santa Fe. These rates apply between Kansas and Oklahoma points and it will be noted that the percentage of the cattle rate to the horse and mule is only slightly higher—it does run up as high as 120 per cent, and through the exhibit the same information is shown. The average percentage of the horse and mule rate to the cattle rate is shown at the bottom of each percentage column. The percentage of the Texas-Oklahoma horse and mule rates to the Texas-Oklahoma cattle rates commences at 204.2 at 50 miles and runs up to 209.8; the lowest is 178.4, the average being 196.5, practically double. That is brought about by the Shreveport scale being established on cattle while the horse and mule rates run wild.

When I spoke of the rate applying from Kansas and Nebraska points into Texas by way of the Santa Fe and Rock Island, I referred to the Rock Island and Santa Fe lines down through the Panhandle, but the Santa Fe comes clean on around by Temple on the north-and-south main line, and the Rock Island extends out through New Mexico; that scale applies on the Santa Fe down through Temple to Coleman. They have practically the Shreveport scale in there to that portion of the Santa Fe from Kansas and Nebraska points, but that does not apply from Oklahoma

points to the same territory. There is a situation here in [fol. 349] Colorado shown on page 3, the first section, Rock Island, where the cattle rates and the horse and mule rates run close together; that is between Colorado, Kansas, and Nebraska points. And on the fourth page it will be noted that between Kansas and Missouri the ratio up to 400 miles is very low. There are very few instances where the percentage of the horse and mule rates of the cattle rates is more than 115 per cent in the scales, and in several instances the horse and mule rates are less than the cattle rates.

Exhibit 36 shows receipts of horses and mules by railroads at Fort Worth, Kansas City, Wichita, and Oklahoma City, with the ratios of the other market receipts to Fort Worth receipts, percentage of the decreases or increases. For the first four years these figures are from the official reports of the stockyard companies at these points. For 1921 I got the Fort Worth figures from the Fort Worth Record, and those for Oklahoma City, Wichita, and Kansas, I got from a telegram a few days ago from the Secretary of the stockyards at those points.

(Upon objection, the 1921 figures were excluded by the Examiner.)

I want to point out the comparison of the Wichita and Fort Worth receipts, as it has been testified that Wichita is the main competitor. 1917 was an abnormal year in all markets, but for 1918 Fort Worth suffered a decrease of 31.5 per cent and Wichita's decrease was only 41.3. In 1919 and 1920, Fort Worth had a decrease of 23.5 per cent and 24.9 per cent, while Wichita had an increase for those years of 66.2 per cent and 34.7 per cent, respectively.

Exhibit 37 is a copy of a letter from W. W. Miller, General Freight Agent of the M., K. & T. Railway, St. Louis, [fol. 350] addressed to me relative to the combination of locals, wherein they acknowledge the Russell Creek combination as being the least and express their intention of having the rate published with a view to having it submitted to the Interstate Commerce Commission for authority to make refund on that basis.

With further reference to my map exhibit, I call attention to these so-called dead-lines, especially to the fact that as to Wichita, Coffeyville, Fort Scott and Joplin they are at or just north of the Red River. In the case of a

market such as Kansas City, it being so much farther away, that moves the dead-line up in some cases, as to Pauls Valley on the Santa Fe and to Reynolds on the Katy; and it is the same way with St. Louis, it moves up as you get farther away, being at Checotah on the Frisco and at Lawrie on the Santa Fe.

(Exhibits 22 to 37, witness Pelton, were duly received in evidence.)

Cross-examination.

By Mr. Wren:

The Texas Livestock Shippers Protective League is not a corporation, it is a voluntary organization of which I am Traffic Manager. It is supported by a contribution of 10 cents a car for all cars shipped to Fort Worth, that amount being deducted by the commission firms. The shippers understand what it is for, and if there is any objection no deduction is made; in that way the shipper becomes a member of the association. I have received authority to represent all the parties mentioned as interveners and in the original complaint. We don't have a meeting of the officers or members to decide what complaints should be filed; that is what they have me for and it isn't necessary to consult the officers. We had one election of officers by members [fol. 351] of the association when we started and they continued in office; I think that was in 1916. I have an interest in this complaint through an individual agreement with each claimant. The members are not assessed anything additional on account of this proceeding, and the association has no interest in the reparation claims, although I have individually.

C. W. Beasley was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination.

By Mr. Pelton:

I am and for the past five years have been bookkeeper for the Fort Worth Horse and Mule Company, and prior

thereto for the W. L. Cooke Horse and Mule Company. When shipments are made to the Fort Worth Horse and Mule Company I handle the proceeds and accounts for them by rendering an account sales to each shipper that comes in, with the freight, yardage, commission, and expense charges deducted.

Exhibit 38 is a statement containing a list of the cars shipped by the various claimants named therein. None of the shipments on this statement were owned by the Fort Worth Horse and Mule Company; they were handled on a commission basis entirely, the commission and freight being deducted in the account sales.

I personally know that there are shippers who frequently shipped to Fort Worth in years past but who have discontinued doing so on account of the unfavorable freight rate. We have one man with us now who you might call a scalper on the market in competition because he can buy on the market cheaper than he can ship in. Because of the difference in the freight and what he can buy them here on the market, he thinks he can beat the game by buying on the market here. He quit shipping to Fort Worth because [fol. 352] of the unfavorable freight rate. A scalper in horse and mule parlance is a dealer that comes in and buys instead of shipping in. He buys and keeps them in a barn and sells on commission through the barn the same thing as if shipped in. He is just a speculator.

As to whether our firm has lost customers and business on account of unfavorable freight rates, I don't think we have shipped to any of them in the Louisiana and Mississippi market for two years, they claim on account of the freight rate. We have lost the majority of the inbound shippers; they are shipping to other markets that always have shipped here. I wouldn't say that our inability to ship out of Fort Worth to our former customers was altogether on account of the unfavorable freight rates; the unfavorable conditions all over the country to a certain extent has stopped a whole lote of shipments out. We claim the unfavorable freight rates have reduced our business and caused us a loss of business in addition to what the general economic conditions caused. We formerly had customers at West Monroe, La., who do not patronize us any more but who are still in business and patronizing other markets;

I think the Wichita and Oklahoma markets are the ones they are going to.

(Exhibit 38, Witness Beasley, was duly received in evidence.)

Cross-examination.

By Mr. Wren:

I have no personal knowledge of any shipment that the merchants at West Monroe made from other markets during the last year; I simply know they have passed through this market and gone on to the other markets to buy. I keep up with prices on the Wichita and Kansas City and Fort Worth markets through the market letters that are passed back and forth, and they all seem to be on a [fol. 353] par. Fort Worth really is getting shipments from the other markets in here, this being a higher market. In some instances the lower markets at the other places have a good deal to do with the people buying there.

Redirect examination.

By Mr. Pelton:

I didn't say the Fort Worth market is higher than the other markets. We have to maintain an open market, a man looking at stock and thinking one of them would probably consider this a lower market, or Wichita or Oklahoma either, a cheaper market. In a general way the Fort Worth market is on a level with other markets; we have to buy and sell on a par with other markets, of course.

Recross-examination.

By Mr. Wren:

The market prices on horses and mules have depreciated very greatly in the last several years. During the war, 1917 and 1918, we had an unusually high market, much higher than it is now and much higher than it was before then. I don't know how the freight rates to the different markets affect the market price, but we are losing shippers, that is, there is a bunch that is going to other markets. If I were a buyer and should go to Kansas City and Wichita

and Fort Worth, I should not think the price I have to pay in order to buy the animals I want would be affected at any of those markets by the freight rate into those markets.

Examination.

By Examiner Oliver:

The Fort Worth Horse and Mule Company is a partnership composed of Roy Jackson, M. G. Whittington and G. J. King.

M. G. WHITTINGTON was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

[fol. 354] Direct examination.

By Mr. Pelton:

I am in the horse and mule commission business at Fort Worth, and have been about 15 years except for about six months in the summer, from March to September. The Fort Worth Horse and Mule Company has gone out of business, partly because Mr. Jackson, who was our partner wanted to quit, and partly because the rates caused us to lose business. I couldn't tell exactly to what extent, but would say that half the shippers that shipped to me here could get better rates to other places, that is what they told me and that is the way I would figure it. I formerly did considerable business in Louisiana but have not in the last couple of years. I discontinued that business because some men that used to buy here all the time said they could get a better rate in St. Louis or Kansas or up that way, and I had some customers at Dolphin, Ala., that entirely quit on that account. I could not absorb a sufficient amount in my profits to reduce my prices to bring that Dolphin shipper to Fort Worth instead of going to Kansas City; I could not retain him and stay in business. I had to go out of business on account of unfavorable freight rates to some extent. The freight rates into a market have a material effect on the price of the animal when you go to sell, because the last few years we have sold with such a small profit to any shipper that a $5.00 difference in the freight would make a big difference in the selling; it would reduce

our profits that much and of course, if we buy an animal at a certain price and have got to sell it cheaper than they sell at other places, why anything will take up the profit and you can not sell it.

Cross-examination.

By Mr. Wren:

I am now with the Fort Worth Horse and Mule Company. [fol. 355] When Mr. Jackson drew out of the firm I ran on for three or four months and then decided I would quit until fall, which is the reason for my discontinuing business for about six months. Mr. King is now in the business with me but Mr. Jackson didn't come back. The horse and mule business increased abnormally here and all over the country during the war period; we had a good business all dur- the war and before the war too. Since the war closed there has been a very marked depression in the price of horses and mules and the general market conditions all over the country have been bad. We are not doing as much business with the Texas people as we have done before; I don't know how it is in Louisiana and Alabama. If they are buying like they formerly did they are not coming here. I don't know whether they are buying or not and have no personal information about their buying in other markets. I don't think there was as large a movement to Louisiana during the war as there was before the war; we had an awful big business down there before the war, about the time the war started.

Examination.

By Examiner Oliver:

I run a commission barn and haven't bought any stuff myself since last March a year ago. Our principal shipments come from Oklahoma, Kansas, Colorado, Mexico, Arizona, and California. We formerly sold in Alabama, Georgia, Florida, North and South Carolina, Mississippi, Louisiana, Arkansas, and Texas, and the eastern part of Oklahoma used to buy a good deal of stuff here.

Redirect examination.

By Mr. Pelton:

I formerly did considerable business buying and selling and shipping in years back; I don't ship any now but buy a few around the barn. I quit that business because I am [fol. 356] doing most of the work myself and don't have time to fool with it, and it was partly on account of the freight rates. If we had the same level of rates at the present time that was in effect before the war, that is the same lvel as between the different markets, I don't think we would have the same business as then but we would have more than we have got. As to whether the Louisiana buyers are still buying, they are still in business down there and they have to ship in that country, as they don't raise any stuff there but buy them at different places.

JOHN C. HICKS, being recalled as a witness, testified further in substance as follows:

Direct examination.

By Mr. Pelton:

Previous to 1919 we enjoyed a big business from Arkansas, Louisiana, Mississippi, Alabama, and Georgia, and in 1920 I went over into those states to see what was wrong. I visited the dealers and met with the same thing everywhere; they told me they would like to buy on the Fort Worth market but they could buy on the St. Louis, Kansas City, and Wichita markets and get their stuff shipped for much less freight, and for that reason they had quit coming to our market. Previous to the 1919-1920 business we have had trainloads of horses go out of here over the T. & P.; we have made special arrangements with the T. & P. to haul trainloads and since that time we have never had to make such arrangements. We had auction sales every week and there was a trainload movement every week, but there has not been any movement in trainloads since September, October, and November, 1918. Since 1920 I don't believe we have shipped in all 50 cars of stock going east on the

T. & P., but previous to that time we shipped approximately 18 cars a week.

[fol. 357] Cross-examination.

By Mr. Wren:

I don't know when they started having those auction sales, as I have been here only five years and they held the sales before I went to Fort Worth. I have heard Mr. Ross speak of his auction sales long before I came to Fort Worth, but for years before that they had weekly sales from September to April. If our freight were reduced to the pre-war level and we had weekly sales, we wouldn't right now get rid of our stock under present economic conditions, but we might have in the fall, as the Louisiana and Mississippi business is always larger in October, November, and December than it would be now, but I don't think they bought anything this last fall like they have heretofore. Those shipments of 18 cars per week eastbound were not made up of horses and mules that were being sold to the government. The special trains I am talking about went to different buyers in Arkansas, Louisiana, Mississippi, Alabama, and Georgia. I am talking about auction sales held here and don't know what became of them after they got over there.

The trip I spoke of was made in July, 1920. I saw J. H. Webb at Dermott, Ark. That was right between seasons and I don't know what he did the next season, whether he bought anywhere else. I was soliciting for the coming season. I went to the Fordyce Lumber Company at Fordyce, Ark. I was there between seasons and didn't go back, but I know they didn't come; lots of them said maybe they would but they didn't. Here are the points I went to: Eutaw and Evergreen, Ala., Florence, Ft. Deposite, Garland, Greenville, Americus, Barnesville, Bowden, Atlanta, Dawson and Griffin, Ga., Alligator, Beldin, Beulah, Jackson, Brook Haven, Clarksdale, Cleveland, Edwards, Greenville, Grenada, Hatticsburg, Indianola, Leland, and Mc,- [fol. 358] Comb, Miss. I also went to Louisiana and down into south Texas. I was soliciting shipments and the buyers came from south Texas that season. In 1917 and 1918 we didn't get much business from south Texas but in 1920 and 1921 all our business came from there. I didn't go up into Oklahoma and Kansas, but we used to get business in Okla-

homa east of the Rock Island where it crosses at Hugo into Ft. Smith.

Redirect examination.

By Mr. Pelton:

Those 18 cars a week shipments to Louisiana were not made to one party at one point, there were different parties. There was no government stock with those shipments.

WM. BLECHA was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination.

By Mr. Pelton:

I am in the business of buying horses and mules at Munden, Kans. and have been for about 11 years. I ship principally to Fort Worth but am not making many shipments now. Previous to the past two years I was shipping to Kansas City and St. Louis, but for the past two years I have shipped to Ross Brothers at Fort Worth. They deducted the freight and expenses and sent us the balance, and I bore those freight charges myself except on a few cars where there was a partnership of Fred Mulch, L. G. Ramsbottom and myself, and on those shipments the partnership bore the freight charges. The business I am now shipping to Fort Worth does not compare with the business two years ago because the stock is too cheap, the freight rate is too high, and you can not make any money.

Cross-examination.

By Mr. Wren:

Some of the stuff I am shipping down here I bought in western Kansas and some in Nebraska. As to why I didn't [fol. 359] ship to Wichita, I never got started there. I don't ship to Kansas City because they haven't had as good a market over there. St. Louis is a better market than it is here on the good stuff, but I haven't made any shipments there lately on account of the class of stuff I have been

buying. I don't know that Fort Worth is any better than the other markets but I have just got started shipping here and have been coming. I wouldn't think there is anything like the demand for horses and mules now that there was two or three years ago. The demand of course makes the market.

S. A. OVERTON was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination.

By Mr. Pelton:

I am in the horse and mule business at Fort Worth, and in the past four or five years have made several shipments of horses and mules there. Most of them were consigned to Ross Brothers, sometimes I would have them consigned to S. A. Overton and Son, but they go to Ross Brothers, handled on the commission basis. They handle the financial end of it and remit the proceeds to me after deducting the commission and the feed and the transportation charges. There was one shipment just before Christmas out of Shawnee of 27 head, of which I had 21 head and Mr. Fivus had 6. The freight charges on that car were prorated between Mr. Fivus and me on that basis, but with that exception S. A. Overton & Son stood all the freight on all those cars shown to S. A. Overton.

S. R. PONDER was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination.

By Mr. Pelton:

I am in the horse and mule business at Fort Worth and [fol. 360] have been for seven or eight years. In the past four or five years I have made quite a few shipments to Fort Worth. I shipped to the Stockyards Horse and Mule Company for about four years and for the past three years have been with Ross Brothers. On these shipments to both

Ross Brothers and the Stockyards Horse and Mule Company the freight was charged to me on the account sales. Those shipments were my individual property and I bore the freight charges on them.

J. A. CAULK was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination.

By Mr. Pelton:

I am in the horse and mule business at Hennessey, Okla., and have been in that business about 20 years. In the last four or five years I have made numerous shipments to Fort Worth, mostly to Burnett and Yount, the last two seasons, and to Mr. Huskins one season, and thousands of head to Ross Brothers. The freight charges were charged to me in the account sales and to my partner and myself when I had a partner.

Cross-examination.

By Examiner Oliver:

J. C. Stinson was my partner, we were partners something like ten years. The loads that were shipped out of Wichita and out of Oklahoma City were partnership loads.

Redirect examination.

By. Mr. Pelton:

I have not been shipping to Fort Worth in the last three or four weeks. My shipments the last four years have not been as much as heretofore; there are several reasons for that, high expenses, high freight, and the demand for stock, the stock being cheap wouldn't carry the expense bills. I am not shipping to any other market now.

[fol. 361] C. J. ELLINGTON was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination.

By Mr. Pelton:

I have been in the horse and mule business in Fort Worth for several years but am not at present. In making my shipments to Fort Worth they were consigned to a commission firm and handled to my account. The proceeds were remitted to me less the transportation charges and all expenses, and I ultimately bore those charges. I shipped altogether to Burnett and Yount. I made some shipments to points in Louisiana, on which I paid and ultimately bore the freight charges.

Cross-examination.

By Mr. Wren:

I shipped from Calumet, Okla., and from Wichita, Kans. The last shipment I made from Wichita was in the early part of 1920. From Wichita we have a very high rate, that was considered high, so we couldn't make any money in handling them. After the stuff got here I don't know whether the freight rate I paid had anything to do with the selling price. On the shipments that were made out of Fort Worth, the animals were sold after they reached destination. The freight rate had a good deal to do with the selling price; we had to try to sell them according to the expense. I usually sold them for what I could get, sometimes I would lose and sometimes I would make.

Redirect examination.

By Mr. Pelton:

When I bought those horses and mules and shipped them to the market and sold them, they were sold at the best price obtainable and I took the chances on whether I would [fol. 362] make or lose anything on the shipment. The higher the freight charges were the less my profit was or the greater my loss.

J. C. Shelton was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination.

By Mr. Pelton:

I am in the horse and mule business at Fort Worth and have been so engaged since about 1911. I have made numerous shipments to Fort Worth; they were all to Ross Brothers except for one year that I was with Romlnger and Company. Since August, 1919, I had a partner, P. G. Jamison. During the period when I was in business for myself the freight charges on these shipments through the commission firm were charged back to me and were ultimately borne by me. For the period of the partnership the freight was charged back to Shelton and Jamison in the same way, and they bore those charges.

D. S. Murray was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination.

By Mr. Pelton:

I am in the horse and mule business at Fort Worth and have been since 1910. During that time I have made numerous shipments to the Fort Worth market. I shipped to the Fort Worth Horse and Mule Company until the fire in 1911, and then I shipped some to Ross Brothers, and later on I shipped to the Fort Worth Horse and Mule Company again. For the last four and one-half years I have been shipping to Ross Brothers only. The freight and feed and commission and expenses were deducted from the gross proceeds and what was left was placed in my credit. In that manner I paid and ultimately bore the freight charges.

[fol. 363] H. P. Walker was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination.

By Mr. Pelton:

I am in the horse and mule business in Fort Worth. I worked for Ross Brothers four or five years on a salary, but since September 18th I have been doing business for myself and my partner. Since that time I have made numerous shipments to the Burnett and Yount Horse and Mule Company at Fort Worth. The stuff was sold and then the freight and everything was charged to me and I ultimately bore those charges.

PETE YOUNT was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination.

By Mr. Pelton:

I am in the horse and mule business at Fort Worth. I have lived here four years but have been in that business six or seven years. During that time I have made various shipments of horses and mules to Ross Brothers and to Burnett and Yount. They were sold by the commission firm and the freight and feed and commission and other charges were deducted and I got the proceeds. Those charges were ultimately borne by me except when I had some partners, and thy paid half of them.

Mr. Pelton: Mr. Examiner, we will have no more witnesses this afternoon but we have several that are on the way and will not get here until tonight, and some of those that have been on here are preparing lists showing their particular interests in the shipments.

Examiner Oliver: Is the case closed as to the rate issue, [fol. 364] the only testimony you are reserving is as to the question of reparation?

Mr. Pelton: Yes, sir.

Examiner Oliver: No further testimony on rates.

Mr. Wren: Mr. Examiner, as a preliminary, in behalf of all of the defendants I would like to make the statement that the defense of the case was prepared on the original

complaint and the amendments as affecting all livestock, and on account of the limited time we have been unable to really segregate the balance of livestock from the horses and mules; we had all our exhibits prepared and it would have been practically impossible at this hearing to segregate it, but all the information is in the exhibits and we will just go ahead with our defense as if the whole thing was involved and it can be considered in that way so far as the exhibits are concerned.

J. A. LYNCH was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination.

By Mr. Swenson:

I am General Freight Agent of the Texas and Pacific Railway, J. L. Lancaster and Chas. L. Wallace, Receivers, headquarters Dallas, Texas.

The complaint brings in issue, according to my understanding, the rates on horses and mules and originally on all livestock southbound from northern points to Texas as compared with the northbound rates on livestock. In the beginning we want to go into the matter of the northbound rates with a view of showing that those rates are unduly low and were the result of conditions which would not warrant their application in the opposite direction and also that we feel they should properly be increased.

[fol. 365] In the Texas Cattle Raisers' case, I. C. C. Docket No. 732, 11 I. C. C. 296 and 13 I. C. C. 418, the rates on livestock, except horses and mules, from the Southwest to St. Louis and Kansas City and other markets were prescribed by this Commission. This finding was based on an investigation made by the Commission prior to August, 1905, and since that time there has been a great increase in the value of livestock; for example, in 1915, 16, and 17, in the Shreveport case, 41 I. C. C. 83, 97, and in the case reported in 48 I. C. C. 283, particularly page 287, reporting market records, the market values on various kinds of livestock were double or practically double the 1911 values. The increase in prices of labor and material used by the carriers has far exceeded the revenue derived from trans-

porting livestock. Attention is directed to 48 I. C. C. 325 to 327, showing the increased price of supplies in 1917.

Exhibit 39 shows the reduced rates on livestock to interstate market points under the order in Docket No. 732 made effective in May, 1908; also, prior rates back to 1897 and subsequent rates to the present time, with the exception of the last 20 and 10 per cent reductions. On horses, sheep and goats, this exhibit shows no change in rates since 1897 from Fort Worth, Midland, San Antonio, and Alice, Texas. The exhibits do not show all the forwarding points but show points which are representative of the general conditions. The rates specified under the columns headed "Horses" apply on both horses and mules.

No changes in the rates on cattle were made since 1894 except reductions from Amarillo, Texas, except the general increases governed by General Order 28 and Ex Parte 74. Changes in the rates on cattle and other livestock were not [fol. 366] followed by changes in the horse rates or vice versa; further, the rates on horses from Amarillo are on a per car basis. The livestock rates are in cents per 100 pounds, that is, livestock other than horses and mules. These exhibits show rates from and to representative points and reflect the general level for many years. There may be certain changes in the rates from specific points but on the whole the exhibits show the general situation.

Under the decision in the Texas Cattle Raisers case, long hauls were involved ranging for the most part from 500 up to nearly 1400 miles. At the time the case was tried the carriers were unable to produce definite evidence that the rates on longhaul stock were unduly low or confiscatory, yet in this case the carriers strongly maintained that the rates were inadequate and carried their contention into the courts. The facts, circumstances and conditions conneted with the Cattle Raisers case are on record and for the purpose of this case I believe it is sufficient at this time to refer to the Commission's report and order. However, the livestock rates from Texas points fixed by the Commission apply from large groups, and commercial and carrier competition and the level of the rates to market points from Kansas had an effect on the level of rates from Indian and Oklahoma Territories that then existed, now Oklahoma, and such rates in turn had an effect on the level of

rates from Texas; some of the Texas points were grouped with the Indian and Oklahoma Territories' rates.

Further, there was and is a certain relationship in the different markets, also between the points of origin, the amount of the rates being dealt with in the cases referred to, also their particular history. The level of rates from Indian Territory to Texas, for example, were about the same [fol. 367] as or controlled the rates from the northern Texas points just south of the Red River. In connection with the rates from Texas, attention is called to the fact that the rates on cattle met considerable competition at the market points with the movement of cattle from other producing points such as Kansas, Colorado, and Wyoming, and in turn the rates on cattle affected the rates on horses and mules. In connection with the rates from Texas is the fact that the Texas cattle moved in the spring of the year to Oklahoma, Kansas, and other northern pastures, from which they moved in the late summer or fall to the markets; in other words, it appears that the northbound rates from Texas were made under stress of severe competition without regard to a fair standard of reasonableness based upon the standard of service performed.

Records in the Cattle Raisers' case show that driving cattle to the northern markets also had an effect on the measure of the freight rate. This is more clearly illustrated in Exhibit 40, which contains an extract from the opinion in the Cattle Raisers case, as well as extracts from opinions in other cases. At that time and since, the position of all the lines has been that these northbound rates are too low and do not compensate the carriers for the service performed or pay their proper share of the burden of transportation. In further support of this statement I call particular attention to the extract shown in the exhibit from the dissenting opinions of Commissioners Daniels and Harlan in the Western Rate Advance, 35 I. C. C. 589, 659, 660, 663, 664, 667, 672, and 681, which bear on the propriety of the livestock rates rather than their reasonableness from a standard of whether both state and interstate livestock bear their just proportion of the transportation burden.

[fol. 368] In the Cattle Raisers Case, 11 I. C. C. 339, the Commission stated that the rates from southern Kansas points for distances to 300 miles yield 14 mills per ton-

mile, for 600 miles 12 mills, for 900 miles 11 mills, for 1,100 miles 10 mills, and from Colorado, western Kansas and western Nebraska rates were approximately 10 per cent lower than from Texas and southwestern territory, while from stations on the Union Pacific to the north they were somewhat lower, which further points to the competitive condition fixing subnormal and depressed rates on livestock in the Southwest without regard to the reasonableness per se of such rates.

Exhibit 41 shows the class rates from St. Louis, Kansas and defined territories to Texas common points, also the class rates in the reverse direction. In 1902 the first class rate was $1.30, in 1903 it was $1.37, in 1908 it was $1.47, which rates were advanced 25 per cent by General Order 28 and later as per the Ex Parte 74 proceeding. In 1908 the Commission authorized an advance of rates upon 127 out of 143 commodities in the Texas Rate Case, 40 I. C. C. 463, but in the same year the Commission refused to permit an advance of approximately 3 cents per 100 pounds on livestock northbound.

My Exhibit 42 shows that in the Dallas-Fort Worth case the Commission approved certain rates on moving commodities which by comparison shows the absolute inequality of the northbound livestock rates. This is further shown in connection with the General Order 28 increase, whereby livestock rates were increased 25 per cent not to exceed 7 cents per 100 pounds as against a full increase of 25 per cent on other classes of traffic. With respect to the northbound movement, shippers of livestock have always contended that inasmuch as livestock moves frequently three [fol. 369] or four times before it reaches its final market low rates are necessary for each movement, as otherwise the aggregate of the charges for each movement will result in a reduction of markets and prohibit necessary movements. That was not only on stock cattle but also on horses and mules; not necessarily the market point in the case of horses and mules but the final destination; the horses and mules go into these markets and many times are re-shipped. They lose their identity at the market, but many shipments of livestock lose their identity when they have market privileges.

My Exhibit 43, which is self-explanatory, is in further support of our contention that the livestock rates north-

bound are unduly low, the purpose of the exhibit being to show the revenue per car per mile derived from livestock as compared with other moving commodities. This exhibit is in relation to the rates northbound from Texas to the northern markets other than Oklahoma City and Wichita. With reference to the rates on livestock to Fort Worth, Oklahoma City and Wichita, also between points in New Mexico, Texas and Oklahoma, with the establishment of packing houses by Armour and Company and Swift and Company at Fort Worth about the year 1905 and at a later date of packing houses by Morris and Company and by Sulsberger and Sons Company at Oklahoma City, the question of rates on livestock to those points arose. Packers located at Wichita in competition with those at Fort Worth and Oklahoma City were very much interested in the question.

The packers and the railroads endeavored to arrive at an adjustment but were unable to agree. The matter was submitted to this Commission for decision with the result that a scale of rates on livestock to these markets was prescribed as per the Commission's report in 22 I. C. C. 160 [fol. 370] and 23 I. C. C. 656. This reference is given with a view of bringing particular attention to the fact that in prescribing a scale of rates on livestock the Commission took into consideration the intrastate rates in Texas which applied to Fort Worth, the intrastate rates on livestock in Oklahoma which applied to Oklahoma City, and the intrastate rates in Kansas which applied to the Wichita market. The resulting scale was the composite of the three intrastate scales, see 35 I. C. C. 672. In considering these rates the Commission stated in 22 I. C. C. 163 that the shippers were entitled to have a reasonable rate on live animals.

Attention is called to the statement in 22 I. C. C. 163 with reference to the rates to these three markets and the necessity for fair relations of one to the other. In that case the question came up as to the rates to those points as compared with the rates to Kansas City, and in connection with the rates to the latter point to the Commission's view with reference to the origin being divided into large groups and further that Oklahoma City and Wichita drew their livestock largely from the same source as Kansas City and were in competition with Kansas City, so that the rates on livestock from those points of origin to the markets should

bear a proper relation to Kansas City. The prescribed scale was higher in some instances and lower in others than that fixed by the Commission to Kansas City, but it was in harmony with the Kansas City rates and resulted in a fair basis, one market to the other.

In connection with this application for modification, I call attention to the Commission's opinion in 23 I. C. C. 659, reproduced in Exhibit 40. I also call attention to the fact that all of the markets were more or less involved in [fol. 371] these proceedings, and it appeared to be the first thought of the Commission to fix rates on livestock to the markets on a relatively equal basis, that in doing so the rates prescribed would not bring about any drastic or severe change in the rates for interstate application as compared with the measure of the rates for intrastate application, and the methods under which the intrastate rates had been made. For example, the livestock rates established by the Texas Commission were mileage rates applying between all points within the state. They were prescribed long before there was a packing house at either Fort Worth or Oklahoma City, and were a part of the general schedule of rates established by the Texas Commission, which were condemned by this Commission in the Shreveport-Texas case as being too low.

Such consideration in fixing interstate livestock rates certainly prevented the fixing of interstate rates based on adequate and proper compensation to the carriers for the services performed, the risk and liabilities attendant upon the transportation of livestock, the special and expedited service, extra and additional expenditures not encountered or not prevailing to the same extent in the handling of other traffic.

With reference to the Shreveport scale, which has been referred to practically all the way through the complainants' testimony, I feel it necessary to go into the circumstances under which these rates were established, the rates being prescribed by this Commission as per 41 I. C. C. 83 and 48 I. C. C. 283. In 1914, when the strongest Texas lines had failed for many years to pay even their interest charges on indebtedness and in rare instances had ever paid dividends, finding that in normal times and under ordinary prosperous conditions that intrastate rates and revenues were too low, the Texas lines filed an application for in-

[fol. 372] creased rates with the Railroad Commission of Texas. The financial status of the Texas lines at and since that time are on record with this Commission, as are all the facts pertaining to the Texas Commission rate advances. The record in Hearing 1373 was filed with this Commission in 1915 at the Houston hearing in the Shreveport case before Commissioner Hall.

The carriers' application to the Texas Commission for increased revenues was refused. The first application was for a percentage increase approximating 15 per cent on all traffic. There were objections to this proposition by the public and the Commission, with the result that it was suggested to the carriers that they submit specific increases on selected commodities and class rates. Hearings on the carriers' second proposition were held in March and September, 1915, under Railroad Commission of Texas Hearing No. 1573 and Circular No. 2751, the record of which was filed with this Commission as stated. The rates proposed by the carriers on cattle and other livestock were higher than the 1716 scale fixed by this Commission in 22 I.C.C. 160. Such higher rates were considered to be justified by the views and expressions of this Commission when connected with the purpose of the decision in 23 I.C.C. 657, pages 660 and 661.

The propriety of the proposed rates was fully developed and showing made by the carriers that livestock was the highest class carload traffic that they handled in that it required, demanded and received a more expensive class of service than that on any other class of traffic. The rates of the Texas Commission on stock cattle, beef cattle and other livestock, horses and mules, were different one from the other, and were established under different conditions surrounding the handling of the different kinds of live-[fol. 373] stock. In other words, the rates were made to foster Texas industry operating principally in a drouthy district of small population and light traffic density, under a system of continuous mileage rates applying in Texas common-point and differential territory without regard to traffic and transportation conditions observed when fixing rates on other traffic. For example, other traffic moved between Texas common points and Texas differential territory on a higher or a differential rate over Texas common-point rates from, to, or between the differential territory.

The differential territory referred to is explained in 12 I. C. C. 427, Texas Common-Point case, 26 I. C. C. 528, and Shreveport-Texas case, 41 I.C.C. 83, including pages 109 and 111, and 48 I.C.C. 312, including pages 331 to 335.

Exhibits 44 and 45 go together, and are offered for the purpose of showing the scarcity of traffic in the differential territory. We call particular attention to the fact that the livestock rates established by the Texas Commission applied to this differential territory in the same manner that it did to points in the common-point territory, where the traffic density was considerably greater, although at the same time the carriers were allowed to charge or make additional charges for hauls in this sparcely settled or light traffic territory. The exhibits are self-explanatory.

Following the 1915 hearing before the Texas Commission the rates on livestock between Shreveport and Texas, and between Texas points, came before this Commission in the Shreveport cases and were disposed of in 41 I.C.C. 83, including pages 96 to 98. Attention is called to the comparison shown in this report of the mileage rates on cattle, hogs, sheep, and goats as prescribed by the Texas Com-
[fol. 374] mission, those proposed by the carriers to the Texas Commission, and those proposed by this Commission in 22 I. C. C. 160. A comparison is also made of the rates on horses and mules based on the Texas Commission rates with those proposed by the carriers and the rates from Shreveport to Texas points.

This report also included on pages 100 to 106 information as to the financial and physical condition of the carriers, with additional information on the subject in Appendices C and D, pages 140 to 177. Exhibit 17 in Appendix C shows the income account of 72 Texas railroads for the year ended June 30, 1915, and that 23 of those lines had a deficit in net income aggregating over $6,600,000.00. Reports of this Commission since that time show the financial condition of the Texas railroads.

Attention is called to the fact that the Shreveport case did not include rates on hogs, sheep, and goats, and the rates originally prescribed by this Commission were suspended under I. & S. Docket No. 958, disposed of in 48 I.C.C. 243, which report goes very fully into the livestock situation and conditions influencing the Commission in fixing the rates between Shreveport and Texas and be-

tween Texas points, a change being made in I. & S. Docket No. 958 on beef cattle, stock cattle and calves, but no change was made in the rates on horses and mules.

Attention is particularly drawn to the statement in 41 I. C. C. 83, on page 94, indicating that there should not be any great or severe change in the measure of the rates or the method of rate making. Careful study of this report is necessary to understand that, while it recognized the peculiarities, extra expense and service incident to livestock as compared with other traffic, nevertheless certain [fol. 375] other influences brought about rates on livestock without regard to proper compensation to the carriers for services performed, liabilities and other factors ordinarily influencing the fixing of reasonable freight rates, fully and completely developed in this record.

Particular attention is directed to 48 I. C. C. page 283, and the comparison of beef cattle rates as prescribed by the Texas Commission, as established by this Commission in 22 I.C.C. 160, and the different scale prescribed by this Commission in this report from that fixed in 41 I. C. C. 83. The 1716 scale, 22 I. C. C. 160, involved hauls ranging from 200 to 800 miles, and was without regard or consideration, in an important way, to the rates and hauls for short distances based on the less average distance on short hauls, which apparently was the governing condition in connection with the Shreveport-Texas rates, 48 I. C. C. 293. In the latter proceeding the Commission made rates for the distances under 390 miles higher than prescribed in 22 I. C. C. 160.

In other words, we first have certain group rates prescribed by the Commission from the Southwest to Kansas City, St. Louis and other markets resulting from the Cattle Raisers Case, 11 I.C.C. 296 under peculiar conditions incident to moving that traffic for average hauls ranging from 500 to 1400 miles, which was further a question compelling and controlling competition depressing and affecting the level of the rates. We next have rates in opinion No. 1716, 22 I.C.C. 160, where, under still different circumstances, competitive conditions and influences fixed abnormally low rates for average hauls of 500 to 800 miles to fit that particular situation. Next we have another mileage scale of rates growing out of discrimination between

Shreveport and Texas on certain kinds of livestock where the average hauls were from 178 to 272 miles.

[fol. 376] With the situation in this condition, a short while after the Director General's Order No. 28 increase became effective in June, 1918, the livestock interest in the Southwest applied to the Director of Traffic for a uniform scale of livestock rates throughout the Southwest to be applied on both state and interstate traffic. This was urged as being particularly necessary at that time because of the drouth existing and the need of shipping livestock to many points where shipments had not regularly been made before, and also because of the varying and discriminatory rates in the various states on state traffic and differences then applicable on interstate traffic in the same territory.

For example, there were two scales in effect on interstate traffic in the Southwest, both established by this Commission, first the 1716 scale and then the Shreveport scale, 48 I.C.C. 283; the latter scale established rates only on cattle and livestock, while the 1716 scale fixed rates on all kinds of livestock except horses and mules. The Shreveport scale is the last expression of the Commission as to rates on livestock for short hauls in the Southwest, where the majority of the traffic first moved under conditions influencing this Commission to fix low rates on beef cattle, calves, and stock cattle. Thus, prior to General Order 28, the Shreveport scale at 780 miles was 40 cents; for the same distance in the 1716 scale the rate was 44 cents. At 400 miles the Shreveport-Texas scale was 27.5 cents and the 1716 scale 27.5 cents. At 200 miles the Shreveport scale was 19 cents and the 1716 scale 17.5. At 100 miles they were 14 and 12.5 cents respectively, and at 50 miles they were 10 and 8.75 cents, respectively.

[fol. 377] The Director of Traffic met the application of the livestock interests by deciding upon a uniform scale applicable throughout Southwestern territory, state and interstate, and issued Freight Rate Authority No. 2797 applying on all livestock except horses and mules. The exact basis of these rates is shown in Exhibit 46.

All of this testimony is for the purpose of showing that the present rates on livestock northbound from Texas to Kansas City and so forth, intrastate in Texas, between Shreveport and Texas under the Shreveport-Texas case

as applicable between Texas and Oklahoma to Wichita, Kans., were subnormal and were due to certain peculiar circumstances arising or applicable to each case. The exhibits show, and we feel they fully show, livestock does not bear its just portion of the cost of transportation, and if the rates on livestock are in any way further reduced it will throw an additional burden on the other classes of traffic, which we do not believe is at all proper.

(Exhibits 39 to 46, Witness Lynch, were duly received in evidence.)

Cross-examination.

By Mr. Pelton:

As to my testimony in connection with Exhibit 39 that there was practically no change in the horse and mule rates until 1918 and that the rates were unduly low, those rates were found proper by this Commission in 11 I.C.C. 315, so that for 10 or 11 years up until 1911 the carriers could not increase those rates as they saw fit. The horse and mule rates at that time were controlled a great deal by the rates on other livestock, but since then the carriers have found they should not have included horses and mules in the general tariff with livestock and in many [fol. 378] tariffs they have been eliminated. The rates on horses and mules then should bear definite relations to other livestock. Up to 1907 the carriers could have charged rates and published them in tariffs subject to attack and they would have applied until someone attacked them and there was a hearing and a decision was reached by the Commission.

I can't say that the carriers were content with those rates for at least eleven years, because that is so far back that I don't believe I could definitely decide; there are lots of rates that they didn't increase with which they are not satisfied. I can best explain that possibly by the fact that the traffic officials of most carriers at that time I suppose, the same as today, have so many things to look after that they can't check out every individual rate situation and raise those that they find are too low. I don't know when the Interstate Commerce Commission was given the power of suspension; I haven't endeavored to keep up with those different dates.

I stated that according to the records the northbound rates on cattle were depressed to some extent on account of the cattle being driven. I made no particular inquiry as to whether all of these rates on horses and mules from all Texas points shown in the exhibitis to Omaha were discontinued in 1908. I know of no necessity for through rates to Omaha. As to whether under present conditions there are no through rates and the combination must be assessed, I would have to look more particularly to the tariffs to find out the situation as to each point. As to whether the two local rates that would apply when there are no through rates contemplate the inclusion of the originating and delivering expense, I don't know that all the rates as published contemplate all the expenses which the carriers are made to ob- [fol. 379] serve or provide at the present time. The law has been changed so that the carriers have to provide or absorb certain expenses that were never included in their contemplation when the rates were originally established.

As to whether it is generally understood that any rate includes the originating and delivering expense of the shipment, what might be termed the terminal expense, as well as the actual transportation of the shipment, I understand that on through movements of that kind there are terminal expenses at intermediate points. Taking a shipment from Midland to Abilene, the rate on any commodity is made, as I understand it, to include all necessary expenses of transportation; it was intended to include that, but as to whether it actually pays all of it I don't know whether I could say, that would be too fine a point. Certainly, it contemplates the reimbursement of the carrier for the terminal expenses incident to the handling of shipments from one point to another.

I would say that every rate should compensate the carriers for all services incident to the handling of the shipment. As to whether the shipper pays the company for that service just the same as for actual transportation services, the shipper pays rates included in the tariff. As to whether, if you add two of those rates together, the shipper pays two originating and two delivering expenses, he may pay some terminal expenses at the point that it is proper for him to pay. The rate may be applicable as a proportional rate and the expense to a proportional shipment would be necessarily the same as to shipments destined to the point

proper. Without investigating the particular movement you have in mind, I can't say that the shipper pays two originating and delivering expenses. The railroads are [fol. 380] supposed in establishing a rate to take care of all transportation expenses, and they hope to have a profit. If they don't take care of the originating and delivering expenses, I understand they reduce or eliminate their profit to the extent of the cost thereof.

As to whether a through rate should properly be less than the combination of the two locals, in many cases it would be proper, but in other cases I don't think it is proper. I can't say that the railroad receives pay for services not performed where the shipper pays the combination of locals, including two originating and two delivering expenses, because many rates are established because of certain conditions on one line that make other lines that compete with them establish similar rates, not necessarily to the same point, and so many different factors control the establishment of rates that it would be an impossibility almost to clearly state a case of that kind.

We feel that all these rates from Texas points to northern points, on horses and mules and all other livestock, were too low since 1917 up to the present time. I believed the 20 per cent reduction I spoke of applied only on livestock other than horses and mules, but that the 10 per cent reduction applied on horses and mules; the tariff will show. It is the carriers' view that those two reductions were made to apply only temporarily as a help to the livestock industry on account of the economic situation. I don't think the 20 per cent reduction on rates amounting to 50 cents or more has been published in Texas, but it was published prior to January 1st to apply in connection with the T. & P. Railway on interstate business and was in effect for some time. The T. & P. refused to participate in the 35 per cent decrease on [fol. 381] stock cattle to the Northwest which came as an informal suggestion. The 20 per cent reduction of the rates over 50 cents was also an informal suggestion of the Commission, but it was in connection with a formal case; it was expressed in a printed opinion of the Commission.

Horses and mules were involved in some of the decisions listed in Exhibit 40, one of which I. & S. Docket No. 555, the Western Rate Advance case. With reference to the showing of population per square mile in my Exhibit 44, whether

the freight rate should be lower where the density of population is greater, when the greater density of population produces a greater density of traffic I would imagine that would be the final result. According to my understanding and observation, the density of population and the density of traffic generally run well together, but I don't know that it is the absolute rule. Where the density of traffic in a sparsely settled territory would require a higher rate than in a more densely settled territory, that has always been the understanding and intention of the carriers, so far as my knowledge goes, though I can't say as to all carriers; that is true so far as our particular line is concerned. In contrasting the population of Texas with that of Oklahoma, I don't think that makes a proper comparison, because you are comparing the entire state of Texas with Oklahoma, where I believe it would be more proper only to compare common-point territory with Oklahoma.

The Shreveport scale applies over the entire state of Texas with differentials, though it is my understanding there are no differentials on the horse and mule rates, but I don't admit that the Shreveport scale is the proper scale on horses and mules. Contrasting the population density [fol. 382] of 30.1 per square mile in Texas common-point territory with that of 40.3 in Louisiana, as to whether lower rates should apply in the territory where the density of population is greater I explained that density of population is not always density of traffic, there are exceptions.

It is the carrier's contention that the Shreveport scale should be materially higher; we do not think it is the proper scale, that it results in the proper earnings or revenues for the carriers or bears its just proportion of the transportation burden. As to whether I would consider a proper rate on horses and mules in east Texas would be reasonable to apply between Texas and Oklahoma, I would first have to know in connection with that the density of the movement of horses and mules, whether they are related to each other. Our view is that the normal rate on all commodities is the class basis, and that only the density of movement and conditions that justify their establishment results in commodity rates being established. There are many commodity rates in effect that we do not believe are proper; they should be cancelled and the class basis applied in lieu of them. I would feel that class A was more the

proper basis to apply from Oklahoma to Texas and in Texas, being on a proper basis and being on the same level; also between Texas and Louisiana and between Texas and Arkansas if the traffic density movement would justify the different scales.

As I understand it, the density of traffic in all territory affects the level of all rates in that territory more or less. As to any specific commodity, it is pretty hard to pick it out generally and give an opinion that would be absolute. In many cases the density of the traffic on a particular commodity enters into the making of the rates thereon. The volume of the horse and mule traffic should be considered in fixing the rate on horses and mules, but whether it is or not as to any particular rate you have in mind would [fol. 383] require a study of that rate to find out whether it was considered. All the circumstances going to the establishment of rates must necessarily be considered; the volume of movement or density of traffic does not necessarily mean that they are controlling in every case. As to whether, if the volume of movement of a certain commodity is considered in the making of that rate between two certain points, it should also be considered in adjacent or competing territories, I think it affects the rates always more or less, but not necessarily to a controlling extent. As to whether the density of the entire traffic should be a more controlling factor in making the rates than the density or volume of any particular commodity that we are figuring the rate on, that is too general a question to make a definite statement on, to my view.

If we had a reasonable schedule of rates on horses and mules in Texas common-point territory and all other conditions were equal in adjacent states, Louisiana, Arkansas, Oklahoma, New Mexico, Kansas, southwestern Missouri, as to whether that particular rate applying in Texas should apply in this outside territory, it is not my view that the mileage scale should be too general and apply over a great large territory from the fact that there are so many complications resulting from those scales that it mixes up the rate situation so it is pretty hard to find what is a correct rate. For instance, the carriers are troubled now with the fourth section orders of the Commission in connection with joint-line and single-line mileage scales which it has itself prescribed. It makes different rates via different routes and is confusing, not only to the shipper but to the rail-

roads or the country agent who applies the rates. I am [fol. 384] not very much in favor of these extended joint line scales.

As to whether the general level of the rates in common-point territory should apply in the outside territory mentioned, if they were the proper rates and bore the proper burden of transportation with the proper return to the carriers, and the transportation conditions in the outside territory were the same as in Texas common-point territory, I think they should apply, but by that I don't mean to approve these mileage scales generally or the Shreveport scale. As to what I mean by a long distance mileage scale, I refer to a mileage scale over four or five hundred miles in many cases resulting in complications. I don't believe you will find as many complications in less distances or where the mileage scales are restricted to intrastate application, but it is very confusing when they are put into interstate application and the fourth section comes into play. If we had a mileage scale applying between Fort Worth and Kansas City, it possibly would remove the present fourth section violations by some routes but it might not by other routes; it would depend on what fourth section order or permission you received from the Commission.

The 110,628 loaded cars received and forwarded at T. & P. stations in 1918 that are shown on the second page of Exhibit 45 refers to the Fort Worth Division as explained in Note 2. I couldn't say as to whether Fort Worth is the largest interchange point on our line in Texas. I haven't checked the interchange either at Fort Worth or at Texarkana or at some of the other points. Without checking the interchange at either Fort Worth or Texarkana, I would say from observation that it would be between the two. We also have several large interchange points on our Eastern Division, which includes the line from Texarkana [fol. 385], via Marshall and Longview to but not including Fort Worth, also the line from Waskom to Marshall. If we received a car at Shreveport it would not be included in this report unless it was destined to a station included therein. This doesn't show the receipts and deliveries to connecting lines; it means cars loaded or unloaded on the T. & P. Railway. The car would be shown only once. This report does not include traffic that originates on one line

and is destined to another line where the T. & P. is an intermediate carrier.

Freight Rate Authority 2797 does not include horses and mules. Page 3 of Exhibit 45 shows the L. C. L. traffic; page 2 is the carload. They refer only to the density of traffic and a comparison of the density of traffic on the different parts of the line. Exhibit 46 has reference wholly to the rates on livestock authorized in F. R. A. 2797 except as any other case is there referred to. As to whether the F. R. A. 2797 established the Shreveport scale over Texas, Louisiana, Arkansas, Oklahoma and eastern New Mexico, as I think the exhibit shows the Shreveport scale was taken as the basis for the rates that the Administration established, but there were changes in them; it was not the exact Shreveport scale that was adopted in F. R. A. 2797. According to my recollection the extreme limit of that scale is 1500 miles. As I understand it, the scale was not originally published to Wichita, Kansas, but was applied there shortly after it became effective; I can't give the exact date without checking the tariffs. It goes out into New Mexico, but without checking the tariff I can't say whether it extends to Arizona or not.

Examination.

By Examiner Oliver:

Referring to Exhibit 43, the minimum weight of 23,000 pounds generally applies on horses and mules throughout [fol. 386] the country; on beef cattle or stock cattle the minimum is ordinarily 22,000 pounds, but in some instances it is lower. Cattle as well as horses and mules are generally loaded in stock cars, but sometimes they use palace cars for horses, the very fine animals. Information will be presented as to the carload value of horses and mules as compared with the carload value of cattle, and also as to what care is necessary in transit other than feeding. I have no information as to relative damage claims on horses and mules as compared with cattle, but the figures can be ascertained.

Redirect examination.

By Mr. Swanson:

According to the census figures the density of population and the density of traffic in C. F. A. and eastern territory

is greater than in the western states, such as Illinois, Missouri, Oklahoma, and Texas, and it is my understanding that the density of traffic many times affects the volume of the rate. It is my understanding, without making a check, that the density of population in intermountain territory, say west of Colorado and west of El Paso, is less than it is in Texas. The Commission granted to the carriers west of El Paso and west of Colorado a 25 per cent increase in their rates locally and in the Southwest generally, west of the Mississippi River, they made it 35 per cent, while in C. F. A. territory, north of the Ohio and east of the Mississippi or eastern Illinois, it was 40 per cent; thus, where they had the dense population and the density of traffic in the eastern territory they granted a higher increase than in the western territory or on the Pacific coast.

Mr. Pelton: You mentioned palace cars to the examiner there—— In shipping horses and mules in palace cars the shipper pays for that extra, doesn't he?

A. Yes, I so understand.

[fol. 387] F. A. Swenson was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination (pro se):

I am Chief Clerk in the General Freight Offices of the Panhandle and Santa Fe and the Atchison, Topeka and Santa Fe Railways at Amarillo, Texas.

Exhibit 47 is a statement showing the receipt of various kinds of livestock at various markets such as Chicago, St. Louis, Omaha, St. Joseph, Kansas City, Wichita, Oklahoma City, Denver, and Sioux City.

Exhibit 48 is a similar statement covering the National Stock Yards at East St. Louis, Illinois.

Exhibit 49 is a statement covering the receipts at Fort Worth for the period 1903 to 1920, inclusive. This was prepared from the 19th Annual Report of the Fort Worth Stock Yards Company. These three exhibits are self-explanatory, but particularly at Kansas City, Wichita, Oklahoma City and Fort Worth the receipts of horses and

mules as well as other livestock for the year 1920 were considerably less than for the period 1915 to 1917, inclusive.

Exhibit 50 is a statement of livestock shipped from these same markets during the same periods, the National Stock Yards not being included.

Exhibit 51 is a similar exhibit covering National Stock Yards, Illinois, which shows the general conditions. These figures were furnished us by the Livestock Department, which said they were taken from the annual reports of the Stock Yards Company; they are the same as were introduced in the various livestock cases, one of which was held recently in Chicago.

[fol. 388] Exhibit 52 covers the shipments forwarded from Fort Worth during the same period. (Note: This exhibit was later withdrawn.)

Exhibit 53 sets out the United States Department of Agriculture estimate of the number of head of livestock on farms and elsewhere on January 1st of each year for the years 1903 to 1921, inclusive, giving the estimate as to each kind of livestock. Referring specifically to horses and mules it will be noted on page 3 that for the total of those nine states in the central west, Illinois, Wisconsin, Iowa, Missouri, Nebraska, Kansas, Colorado, Wyoming, and South Dakota, versus the United States the total on the farms and elsewhere was less on January 1, 1921, than during the three preceding years, and only slightly higher than the 19-year average, whereas for the entire United States the total is less than the nine preceding years and only slightly higher than the 19-year average; practically the same thing is true with respect to mules.

Exhibit 54 shows the United States Department of Agriculture's estimate of the number of head and valuation of livestock on farms and elsewhere, taken from the yearbook of the Department of Agriculture, covering all classes of livestock in the states of Arkansas, Oklahoma, Louisiana, Texas, and New Mexico, the total for those five years, and the total for the United States. The exhibit is self-explanatory.

Exhibit 55 contains almost the same information as that in Exhibit 54 but in a more concrete form. The value of horses was less on January 1, 1921, than the values 1907 to 1920 but greater than the values for 1903 to 1906, while on mules the values were less than for the period 1910, for the

average of 1911 to 1915, for the years 1917 to 1920, but higher than all years for the period 1903 to 1920.

[fol. 389] A summary of Exhibits 53 and 54 shows that on January 1, 1921, there was on the farms and elsewhere 177,907,000 head of stock other than horses and mules, while there was a total of 25,182,000 head of horses and mules. In the nine northern states covered by Exhibit 53 there was a total of 60,400,000 head of livestock other than horses and mules and of 8,786,000 head of horses and mules. In the five southwestern states covered by Exhibit 54 there was a total of 23,376,000 head of livestock other than horses and mules and 4,136,000 head of horses and mules. This also indicates that the nine northern states in the former exhibit had double the number of animals of all classes of livestock than did the five southwestern states of the latter exhibit.

Exhibit 56 is a statement of receipt, also total valuation, valuation per kind, and average valuation per head of livestock at the Union Stock Yards, Chicago, Ill., for the 21 years 1900 to 1921, inclusive, the data being compiled from the annual reports issued by the Union Stock Yards Transit Company, Chicago, Ill. In this connection the values at the Chicago market are to a more or less extent representative of the values at the other markets.

Exhibit 57 is a statement of the area and population of the states of Arkansas, Oklahoma, Louisiana, New Mexico, and Texas as compared with the states of Missouri and Illinois, taken from the United States 1920 Census, and in addition thereto a comparison of the head of livestock on farms and elsewhere for the southwestern states referred to on the second page compared with the states of Illinois and Missouri. Exhibits 56 and 57 are self-explanatory.

Exhibit 58 shows the freight traffic density of railroads in the United States represented by ton-miles per mile of [fol. 390] line, comparing the eastern district, the western district, and the state of Texas for the period 1906 to 1919, as obtained from the Interstate Commerce Commission reports. On the second page is shown the freight traffic density of the railroads operating in C. F. A. territory for the year ended June 30, 1916, and for the year ended December 31, 1920, which figures were furnished by the Accounting Departments of the railroads. The first page shows the freight traffic density of railroads operating in Missouri for the year ended June 30, 1916, and for a part of the

same carriers for the year ended December 31, 1920. We were unable to secure the information for all the railroads for the year ended December 31, 1920, and we took those who could furnish the information.

The next page shows the freight traffic density of 10 southwestern lines for the period ended December 31, 1918 and 1920. The next sheet shows the freight traffic density of 14 Texas carriers for the period ended December 31, 1918 and 1920. The last sheet shows the ratios of the freight traffic density of Texas to the United States, the eastern and western districts, etc.; also the Texas lines and principal Texas lines or southwestern lines to the Missouri lines, the lines of the eastern district, and the lines of C. F. A. territory for various periods. These exhibits are self-explanatory. We secured the information for the Texas lines from the Texas Commission reports, and we figured the ratios for ourselves.

Exhibit 59 is a comparative statement of per ton, average loading, revenue per car, gross ton-miles, and gross ton-mile earnings on livestock versus other freight moving from Kansas City, Mo., Oklahoma, Okla., Dodge City and Wichita, Kans., to Forth Worth, Texas. The heading of the statement indicates that the car-mile earnings are [fol. 391] shown, but that is not correct. The car-mile earnings in the first item is 58 cents, the second 35.5 cents, the third 35.5 cents, the fourth 21 cents, the fifth 15 cents, the sixth $1.50, the seventh 46 cents, the eighth 70 cents, the ninth 29 cents, the tenth 94 cents, the eleventh 36 cents, the twelfth 65 cents, the thirteenth 50 cents, the fourteenth 49 cents, the fifteenth — cents, the sixteenth 83 cents, all figured on the actual loading of the commodities and not on the minimum weights applicable to the shipments. The car-mile earnings on horses and mules are 58 cents, whereas the car-mile earnings on a commodity like wheat from Oklahoma City, Dodge City and Wichita to Fort Worth are $1.50, 70 cents and 94 cents, respectively, the value of wheat being approximately $1300.00 on an 80,000 pound car.

Exhibit 60 is a statement showing the current northbound and southbound rates between various Texas points and the various markets, with the per car rates and the per car mile revenue. These figures include the Ex Parte 74 increases but not the reductions recently put into effect on livestock.

Exhibit 61 shows the rates on various kinds of livestock between principal points in Arkansas and Oklahoma and the various markets, and is self-explanatory.

Exhibit 62 consists of several statements, the first sheet of which contains a comparison of class rates in high and low traffic density territory. It is necessary to use this exhibit in connection with Exhibit 58. The high traffic density territory referred to on page 1 of Exhibit 62 is between Kansas City and St. Louis, the traffic density being fairly represented by page 3 of Exhibit 58. The low traffic density territory on page 1 of Exhibit 62 is that covered by column B under Memphis-Southwestern scale for 278 [fol. 392] miles and column C under the Shreveport scale for 278 miles. The traffic density of Memphis-Southwestern territory on the Shreveport scale has not been obtainable, but we have used or will use the traffic density of 14 Texas carriers as being representative of the condition.

I have shown in columns D and E the percentage of increase of columns B and C over A, and the average of the 10 classes with the average percentage of increase. That is quite important in connection with these rates, as is shown in the following pages of Exhibit 62. On page 2 of Exhibit 62 I have shown also a comparison of the same class rates, using from Kansas City to Chicago, with the Memphis-Southwestern and the Shreveport scales. On page 3 I have shown a comparison of commodity rates applicable between Texas points as compared with those in effect between Kansas City and St. Louis, with the percentage of increase of the Texas rates over the Kansas City-St. Louis rates. On page 5 we have shown a comparative statement of mileage rates on cattle, carloads, in high and low traffic density territories. The high traffic density territory in this particular case is C. F. A. territory and the low traffic density territory is in the Southwest, covered by F. A. Leland's I. C. C. No. 1370, which contains the so-called Administration scale, F. R. A. 2797.

It will be noted that the rates on cattle for distances under 75 miles are lower than the C. F. A. scale, while in the territory between Chicago and Kansas City the class rates are much lower than in the Southwest. For distances over 75 miles the percentage of increase of column B over column A ranges from 9 to 19, but not as high as the class rates on pages 1 and 2 between southwestern points and

Kansas City and St. Louis, also between Kansas City and [fol. 393] Chicago. Page 6 shows a comparison of the rates on horses and mules and other livestock, and a comparison of the first-class, also an average of 10 classes from Kansas City and St. Louis, between Texas points for the same distance of 278 miles, and between Arkansas and Oklahoma. The percentage of the first class rate, the percentage of the average of the 10 classes and the percentage of the cattle rates are shown underneath. There are no horse rates in there; there wasn't any mileage scale so we didn't show that.

The purpose of Exhibit 62 is to show that the present level of rates on horses between Texas points, which has been called the Shreveport scale, is not in line with the rates on horses in effect in a much higher traffic density territory, and neither are the cattle or other livestock rates. Particular attention is called to the percentages shown at the bottom of page 6. The percentage of the first-class rate between Texas points of the rates in effect from Kansas City to St. Louis is 158.2 and on the average class rates it is 181.85. On horses it is 102.33, on cattle 134.48, and so on. I believe this goes to show that if there is to be a relation between the class rates and other commodity rates between southwestern points and that high density territory, then there should be some such relation on livestock.

Page 8 of the exhibit shows a further comparison of the rates on livestock for very long distances, comparing Brownsville, Texas, to Higgins, Texas, with St. Louis to New York. It will be noted there that the rates on horses and mules for 996 miles are less than the cattle rates, which is further evidence that there is something very radically wrong with the scale applicable on horses and mules between Texas points. The percentages of the rates on horses [fol. 394] and cattle compared with first class and on horses compared with the cattle rate is also shown on pages 8 and 9. I have further shown the same sort of comparison of the rates from Kansas City to Chicago with Roscoe, Texas, to Texarkana.

The complainants have particularly stressed a basis of 115 per cent of the cattle rate for application on horses and mules in southwestern territory. With the situation shown in Exhibit 62 that the horse rates are in instances, namely, from Kansas City to St. Louis 148.28 per cent,

from St. Louis to New York 152.86 per cent, and from Kansas City to Chicago 143 per cent of the cattle rates, that is, the standard market rates on beef cattle and not the stock cattle rate—it is contended that the 115 per cent basis of the cattle rate for application in southwestern territory does not fit the situation. The so-called Shreveport rate on horses and mules shown on pages 136 and 137 of A. C. Fonda's I. C. C. No. 100 for distances over 810 miles is the same as it is on cattle where the distances are 840 miles or over 810 miles, and is less than the actual rate for both single-deck and joint-line hauls for distances over 840 miles. Surely this adjustment should not be extended into other territories under the present conditions.

The so-called C. F. A. scale on livestock referred to on page 5 is one fixed by this Commission, but I do not have reference to that now and will furnish it on brief. That same scale prior to the increase on the livestock rates was fixed by the Commission for application between Kansas City and St. Louis and I believe also between Kansas City and Chicago, but there has been a disparity between those two scales because in the C. F. A. territory the livestock rates were increased 40 per cent under Ex Parte 74 while [fol. 395] between Kansas City and St. Louis and between Kansas City and Chicago they were increased only 35 per cent.

From my personal knowledge, and having checked the record, the traffic density of all livestock on the Santa Fe lines between the Missouri River and Chicago will exceed the traffic density of livestock on the main line of the P. & S. F. Railway. How that compares with the traffic density of livestock on other carriers, I can't say, because I haven't had the time to check it, but the P. & S. F. Railway has always thought it was a big livestock carrying road. Our spring movements of livestock range cattle and our fall movements have amounted sometimes to as much as 7,000 cars, mostly cattle. I make this statement as to traffic density between the Missouri River and Chicago because it is apparent with the high traffic density territory over there that these higher rates than you have in Texas would indicate that the Shreveport scale, or any kind of a scale that is lower than that basis of rates up there, is unfit for this section.

Exhibit 63 is a comparative statement of the cost per 1,000 gross ton miles on various railroads party to this complaint and a comparative statement per 1,000 net ton-miles for those same carriers for the years 1910, 1918, and 1920, as furnished to me by the Accounting Department of each of the lines listed; these figures are those reported to the Commission in their regular reports on what is called form I. C. C. O-S-6. That is a standard form and it explains itself. The cost per 1,000 gross ton-miles, I believe, is understood by everybody present as being the actual cost of operation, not including interest charges and other charges; it is merely the transportation cost. The summary on page 2 shows that for all of the carriers involved there has [fol. 396] been a substantial increase in the cost per 1,000 gross ton-miles, 1920 over 1910, you might say practically 100 per cent. The cost per 1,000 net ton-miles does not show quite so large an increase, although the increase is substantial, being approximately $1.80 per net ton.

Exhibit 64 is a statement of operating expenses, operating revenues, and operating ratios of the representative lines operating in southwestern territory. These figures were also furnished to us by the Accounting Departments of the various railroads and were tabulated by us, and are those which can also be obtained from the records of this Commission. The operating ratios on page 3 of this exhibit will reflect the conditions during the year 1920 as compared with those prior to any increase in rates, prior to the year 1918, and you will note that the ratios are in many cases right up to 100 per cent and in seven cases above 100 per cent. We maintain that serious consideration should be given to this showing in deciding this case, because the carriers can not stand a reduction in revenue down to the Shreveport scale on horses and mules between the territory involved.

Exhibit 65 contains extracts from the opinion of the Commission in 26 I. C. C. 27-51. I believe that is the case where the Commission fixed the C. F. A. scale between Missouri points that I previously referred to.

It would have been interesting to have prepared figures showing the livestock tonnage versus all freight handled by the carriers involved in this complaint, but the time was short, and particularly because of the application of the Shreveport scale between Texas points we thought it ad-

visable to have figures prepared from the annual reports [fol. 397] of the Texas Commission which would show the percentage that the livestock traffic bears to the total traffic handled. That information is shown in Exhibit 66, from which you will note that it is less than 4 per cent except in the year 1917. The information for the years 1919 and 1920 was not available at the time this statement was prepared.

(Exhibits 47 to 66, Witness Swenson, were duly received in evidence, Exhibit 52 being later withdrawn.)

Cross-examination.

By Mr. Pelton:

Exhibit 55 shows the average of the values over the entire United States. Exhibit 57 shows that the population per square mile of Arkansas, Oklahoma, Louisiana, Missouri, and Illinois, is considerably greater than that for Texas, 17.76. As to whether that warrants cheaper rates in that territory, I have just pointed out that they have higher rates in Missouri and Illinois than they have down here, that is, higher rates on livestock but lower rates on other commodities. It is true that as a general proposition high density of population tends to lower the rates. As shown on the second page of Exhibit 67, the number of head of horses in the southwestern states is 4.79 and in Illinois and Missouri 19.97, the density of population in Illinois and Missouri being considerably greater than in the southwestern states, but we must not lose sight of the fact that they have higher livestock rates up there than we have in Texas or in the Southwest. I am comparing those livestock rates with the Shreveport scale or with the F. R. A. 2797 scale on livestock other than horses and mules. That is a comparison of the number of livestock on farms in these different territories, which is controlled to a considerable extent by the density of population.

While Exhibit 58 shows that in 1920 the density of traffic in Missouri was 1,227,405 ton-miles to a mile of line and for [fol. 398] ten southwestern lines it was 1,003,837, I don't say they show a tendency for cheaper rates in that territory than in the Southwest. By this exhibit and by an exhibit following I have shown that with the freight traffic density in Missouri they have higher livestock rates than

we have under the Shreveport scale in Texas where we have a much lower traffic density; there is a peculiar situation. I don't say they should have lower rates. I do say they have rates there to-day that the Commission has fixed; I am trying to prove by this exhibit that we should have higher rates down here where we have a lower traffic density, that our rates down here are too low.

The Fort Worth & Denver, the Panhandle & Santa Fe, the Sunset-Central Lines, the Texas and Pacific and the Rock Island are the principal lines traversing differential territory in western Texas, but there are other lines out there. The mileage of the Rock Island lines through Stevens and Dalhart and east and west of Amarillo does not compare at all with the Southern Pacific and T. & P. mileage, but they operate through western Texas and we have always considered them with other western Texas lines. The lines you have mentioned show the greatest ton mile density of traffic, but that would not be controlling because in considering the traffic density it would not be fair to pick out three lines in Texas when there are 14 other large Texas carriers; you would have to consider the densities of all the other Texas lines. Without making a check I couldn't say how many of those other 14 lines are in differential territory; there are quite a number of lines in differential territory, on this particular sheet the St. L., B. & M., and part of the G., C. & S. F., and part of the I. & G. N., and part of the K. C. M., & O., and a part of the S. A. & A. P., [fol. 399] and then there are other smaller roads like the S. A., U. & G., and the Texas Mexican. A very small portion of the mileage of those lines, I believe, is in differential territory.

As to why the rate from Kansas City to Fort Worth shown on the first page of Exhibit 60 is $279.45 for a distance of 507 miles and the rate for 915 miles to Lake Charles is $154.00, as shown on page 7, I can't answer that question as well as I want to, but the rates from Kansas City to Louisiana were in the first instance influenced by the rates from St. Louis to New Orleans. In years past the rates from St. Louis to New Orleans have been very low, and are now subject to revision under the so-called Mississippi River case, Docket No. 1303. Those rates from St. Louis and Kansas City to interior Louisiana points were influenced by the rates to New Orleans, and any of the

Kansas City lines would naturally try to get that business and they would haul it through to Fort Worth. As a matter of record, in Docket Nos. 13001 and 13002 the question of rates on horses and mules from Kansas City and St. Louis to Louisiana were considered, although the Commission has not yet rendered its decision. It is my advice that the carriers proposed a rate of $218.20 per 36 foot car from Kansas City to New Orleans and Lake Charles, the rate from St. Louis to New Orleans to be $25.00 less than from Kansas City. Some adjustment was also recommended from Kansas City to Texas, the proposition being to establish a rate from Kansas City to Beaumont and Houston of $218.20 and from Kansas City to Fort Worth of $198.65 as a compromise to cure the fourth section violations, although they thought that adjustment was too low.

I can't say definitely what influenced the Kansas City-Alpine rate shown on the fourth page, although I believe the [fol. 400] Orient Railroad made that rate. They carry the rate in Leland's tariff. As to whether the Kansas City-El Paso rate was unduly depressed, I believe that situation was controlled by the El Paso & Southwestern Railroad, that being the short line from Kansas City to El Paso, the distance being approximately 950 miles. From Kansas City to Pecos, where the Santa Fe hauls it all the way at the same rate, $227.25, that was influenced by the E. P. & S. W. fixing the rate to El Paso, Pecos being in the El Paso group. The El Paso & Southwestern does not reach Kansas City but it controls the rates into El Paso. I don't know who put the rates in, but if that line puts in a rate at El Paso of $247.25 it controls the whole rate structure in the El Paso group. As to whether this Alpine rate from Kansas City is applicable through Fort Worth on the Southern Pacific lines and would create a fourth section violation, it would, but under Fourth Section Order No 3700 the long line has a right to meet the short line rate.

As to whether I consider it fair and reasonable to the Fort Worth market to have the rate from Kansas City to Fort Worth $279.45 for 507 miles, from Kansas City to Amarillo $156.00 for 551 miles on page 2, and from Kansas City to Pecos $247.25 for 852 miles on page 3, I want to say that there isn't any doubt that the livestock rate structure in the Southwest is all mixed up and there isn't anybody that found it out quicker than the railroads when they got

into this case. That is a broad statement but nevertheless it is true. It is shown by Exhibit 60 and also by Exhibit 61, and when you ask me if the rate to Fort Worth may be reasonable that rate may be reasonable and the other rates may be unreasonable. I have maintained, and I still maintain, that any rates between any of this southwestern territory that are less than the Commission has fixed between [fol. 401] Chicago and Kansas City and between Kansas City and St. Louis, and in C. F. A. territory, are unreasonably low. I believe the whole structure of rates established by the Railroad Administration for application throughout the Southwest is unduly low.

The scale in southwestern territory over 75 miles shown in Exhibit 62 is not considerably higher than the C. F. A. rates; it all depends on what is meant by considerably higher. I contend that if the rate for 278 miles, for instance, which we will compare with the livestock rate for 300 miles, the average of the 10 classes in the Shreveport scale is 81.85 per cent of [over] the average class rate from Kansas City to St. Louis. If the average of the class rates is 81.85 per cent greater than the Kansas City-St. Louis rate, there is something wrong with these ratios on livestock in southwestern territory over the C. F. A. scale. I would say that even the 19 per cent for 400 miles above the C. F. A. scale in southwestern territory was unduly low if the average of the class rate is to be around 80 per cent like it is shown on pages 1 and 2 of Exhibit 62. When it comes to making rates on any commodity, we always fall back upon the class basis, as stated by another witness. We first get the class rate to find what relation this new commodity rate would bear to the class rate, and we always start out that way.

As to whether the Commission fixed both the C. F. A. schedule and the southwestern territory scale shown in Exhibit 62, it didn't fix the southwestern schedule; the Railroad Administration did that over the protest of some — the carriers. As to *the* whether the Commission fixed that schedule in the Shreveport case, that has been fully covered by the exhibits offered by Mr. Lynch in which he gave [fol. 402] the basis for the F. R. A. 2797 scale. Even if the Commission did fix the Shreveport scale, or a scale that is almost on a level with that F. R. A. 2797, I still contend that that is the wrong scale and it ought to bear its proper re-

lation to the rates that are in effect in other territories. As to whether the rate shown on page 7 of Exhibit 60 from Kansas City to Shreveport for 745 miles as compared with the rate of $279.25 on page 1 from Kansas City to Fort Worth for 507 miles discriminates against the Fort Worth market, I have already pointed out that in Docket Nos. 13001 and 13002 rates to Louisiana have been suggested which would cure that situation, but it does discriminate against Fort Worth. As to whether the rate of $247.25 for 1066 miles to El Paso and all such rates on both sides of Fort Worth and beyond Fort Worth are discriminatory against Fort Worth, they may not be discriminatory, because Fort Worth, so far as I know, never competes with El Paso; your discrimination may be a paper one and not an actual one. Whether Fort Worth would be entitled to the same level of rates as the other points depends on conditions.

I haven't checked Exhibit 61 to determine whether the southbound rates on horses and mules from Denver, Kansas City, St. Louis and Chicago, to points in Arkansas and Oklahoma differ in any instance from those on the second page thereof, which are the northbound rates between the same points. The figures are there and in your brief you can make any comparison you want to as between the northbound and southbound rates. However, it would be more proper to say "outbound" than "southbound" because the directions are not always the same. At the bottom of page 3 the Fort Worth rates are shown in both directions, the first section being the Arkansas rates, as to which there is a considerable difference in the inbound and [fol. 403] outbound rates. There is no difference in the northbound and southbound Oklahoma rates just below there. The inbound rate from Little Rock to Fort Worth shown on page 3 is $261.05 for 358 miles, and from Fort Worth to Little Rock it is $167.90. I can't say to how many points in Arkansas that rate applies, but the exhibit shows four points, and the rate in the opposite direction applies to the same four points. The rate of $183.50 from Denver to Little Rock for 935 miles applies to four points, but not to the same four points as in the case of Fort Worth, Ashdown being a little higher.

Mr. Examiner, before we get off of this exhibit I would like to make another statement. In checking these rates

from the various markets to points in Arkansas and Oklahoma we picked out at random, not with a view to seeking any favorable comparison for the carriers but to show just what they were and place the situation before the Commission and to show the chaotic condition of the general livestock situation in the Southwest and that it needs attention. You can not give attention to horse and mule rates in one case without cattle rates and other livestock, and while we can not broaden the subject out there should be some sort of an adjustment in these various rates. The rates from the Missouri River and St. Louis into Oklahoma southbound are unreasonably low; the movement is entirely northbound and there is practically no movement southbound. The rates to the Missouri River and Oklahoma apply between, but they do not apply into Texas.

I do not see any justification for such a radical difference in the rates at the breaking point of the Red River, absolutely, but I do think that the rates from the Missouri River and Kansas into Oklahoma southbound are unduly low. The movement has always been northbound, and so far as [fol. 404] horses and mules are concerned they move in both directions. As to whether I think there ought to be some revision of the southbound rates, making the interstate rates apply into Texas or raising the other rates beyond, perhaps you will have to do both. In Docket Nos. 13001 and 13002 the railroads *of* proposed a rate of something like $198.00 from Kansas City to Fort Worth. I am sorry it didn't cover the whole situation rather than just the horses and mules, because it surely is bad.

Redirect examination.

By Mr. Wren:

Turning to the next to the last page in Exhibit 58, the traffic density shown for those two years includes all traffic handled, state and interstate, originated, forwarded, and intermediate tonnage. I can't say whether, taking the Fort Worth & Denver, for instance, with a very large tonnage of traffic density shown there, that is mostly interstate, not originated in Texas; probably not for the years 1918 to 1920, but it was segregated in the old reports and the annual reports of the Texas Commission.

Examination.

By Examiner Oliver:

The fourth section violations that have been pointed out by the complainants are all covered by applications and we can furnish the numbers of those applications in fifteen days. I don't know that we can furnish all of them but we will try to do so. We can furnish those covering the violations in Leland's tariffs in short order, but possibly not all of those pointed out by Mr. Pelton on individual lines. We will do so as far as we can.

(The defendants were thereupon given fifteen days in which to furnish the fourth section application numbers.)

[fol. 405] Recross-examination.

By Mr. Pelton:

As to the Fort Worth & Denver tonnage just touched on, that line originates quite a large tonnage of grain but not as much as the P. & S. F. Most of the wheat moves to Galveston, but I really don't know to what extent the grain originated on the Denver moves intrastate.

M. J. DOWLIN was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination (pro se):

I am Assistant General Freight Agent of the Chicago, Rock Island and Gulf Railway. I am and long have been of the firm conviction that under the current rate structure and adjustment livestock does not pay its legitimate portion of the transportation cost, or the expenses of operation, and our exhibits have been prepared for the purpose of demonstrating this fact, and I believe they do.

Exhibit 67 contains statistical information with respect to the movement of livestock over the Rock Island for the years 1917-18-19-20 as compared with certain other commodities named thereon. While the statement appears to be self-explanatory I call special attention to the average net weight per car in connection with livestock traffic as

compared with the same data for other traffic, as indicated on the exhibit. It will be noted that the average net weight of livestock for the year 1917 was 10.5 tons per car, whereas the lowest net average weight of products of agriculture during any of the years shown was 25.7 tons per car. Our freight charges are based on the net weight, so it will readily be seen that it is necessary to handle more than two [fol. 406] cars of livestock in order to secure the same amount of revenue weight that is yielded by one car of the products of agriculture. Two cars of livestock yield approximately 21 tons of revenue-bearing weight and involve the transportation of approximately 57 tons gross weight, whereas one car of products of agriculture would carry 25.7 tons, using the four-year average, but in the case of products of agriculture the gross tonnage to be transported, is 47, which is about the average for the four years, or 9.5 tons less gross weight in favor of the products of agriculture with an increase of between 4 and 5 tons of revenue tonnage.

Many illustrations of this character can be made from the figures shown in this exhibit. In addition to tonnage features the handling of livestock requires special expedited service as road haul, special and preferred handling at terminals, and in most cases as to the Rock Island, which in my opinion is typical of the other roads in this section, requires the absorption of switching charges of foreign lines on a larger percentage of the tonnage of livestock than on dead freight by reason of the fact that the bulk of livestock moves to and from public markets where the stock yards at which the unloading and loading are performed are not reached by the rails of the road-haul carrier, and so involves the absorption of switching charges. Under paragraph 5 of section 418 of the Transportation Act of 1920, carriers are required to bear the expense of loading and unloading livestock at public stock yards, also at intermediate points of transportation where unloading for feed, water, and rest is necessary. This expense is not present, generally speaking, with other carload freight.

[fol. 407] In the case of livestock there are quarantine regulations, the observance of which very often involves additional expense to the carriers. One of these is the cleaning and disinfecting of cars for the handling of livestock if the cars are used interchangeably between quaran-

tine and native territory. Under certain conditions livestock is often accompanied by caretakers who are furnished with free transportation. There is also in connection with livestock traffic a heavier movement of empty cars than on almost any other traffic.

Exhibit 68 is a statement showing the average per car loading of carload freight handled over the Rock Island lines during the calendar years of 1917-18-19-20. I again call attention to the comparative loading per car of livestock contrasted with the loading of the products of agriculture.

Exhibit 69 is a statement of the earnings from the transportation of livestock over the Rock Island lines for the calendar years 1919 and 1920 as compared with the same data with respect to certain other commodities, and I believe it is self-explanatory.

Exhibit 70 is a statement showing the receipt of the movement of various kinds of empties to loaded cars over the Rock Island for the month of October, 1915, which is the last period for which this information was available when the exhibit was compiled. Special attention is directed to the large percentage of empty stock car movement in connection with the livestock traffic as compared with the empty movement of other classes of equipment.

Examiner Oliver: That percentage is rather unusually high, isn't it, 60 and 82 per cent?

The Witness: I have another exhibit for the Santa Fe. That is the first time we have ever gotten the figures on [fol. 408] an exhibit of this kind. It was compiled by our Accounting Department in Chicago for one month only, and it was during a period when there was a very heavy movement of livestock. We believe that comment on this exhibit is unnecessary.

Exhibit 71 is a statement showing the ratio of the movement to loaded cars for the Frisco, T. & P., K. C., M. & O., Missouri Pacific, and Santa Fe for the calendar year 1920, in which the movement of livestock cars is segregated from other classes of equipment. This exhibit is also perfectly plain, I believe, and needs no further comment.

Exhibit 72 is a statement of the number of cars of livestock and cars of all other commodities handled by the

C., R. I. & P. for the periods indicated. This exhibit shows percentage of decrease in the movement of livestock versus other commodities and I think it is self-explanatory.

The furnishing of transportation to attendants in charge of livestock shipments is a matter peculiar to livestock traffic. It is true that attendants are also passed with a few other commodities, among which are live poultry and bananas, but the transportation of attendants with other commodities than livestock is insignificant in comparison. The purpose of having attendants accompany the shipments of livestock is of long standing, having been inaugurated a great many years ago when transportation conditions and practices as pertaining to the handling of livestock traffic were materially different from what they are to-day. When the practice was initiated it was for the purpose of safeguarding the animals being transported by having accompanying the shipments experts in the handling of live animals who were better qualified to protect the stock [fol. 409] than the average railroad train crew not familiar with the handling thereof. This was upon the ground that it was a service of value to the transportation companies and therefore free transportation while accompanying the livestock, and under certain conditions free transportation on the return trip, was given to such attendants. When this practice was initiated railroads were not as well equipped for handling of livestock traffic as they are to-day, and many railroads' facilities were crude and cumbersome to operate.

Exhibit 73 is a statement showing in detail the value at regular passenger rates of free transportation provided by the C., R. I. & P. Railway for attendants with shipments of livestock for the calendar year 1920. This exhibit is also plain, I believe, but I direct attention to the fact that the total value of transportation of this character furnished to attendants accompanying livestock shipments, and to provide them with return transportation under the rules lawfully published, amounted in the year 1920 on the C., R. I. & P. Railway to $237,313.67. During the same period the value of transportation at current passenger rates on the C., B. & Q. amounted to $468,301.50; on the C. & N. W. it amounted to $285,781.95, on the A., T. & S. F. to $339,949.20, and on the Missouri Pacific to $168,525.87; on the Texas and Pacific the value of transportation furnished to attend-

ants accompanying livestock shipments, excluding free transportation, at regular passenger rates amounted to $12,274.22. On the Southern Pacific System the value of return transportation furnished to attendants in charge of livestock shipments, not including the value of transportation for such attendants while accompanying the shipments, amounted to $43,233.00. These figures show a value of free transportation on the lines named of $1,575,379.34 for the [fol. 410] year 1920, although the figures on the T. & P. and the Southern Pacific are far from complete.

Examiner Oliver: With reference to that, isn't it customary that these attendants ride in the caboose of the freight?

The Witness: Yes sir, it is customary that they do so. When this practice was first inaugurated and before the personal injury got to such high efficiency the attendants were not restricted to stringent rules as to remaining in the caboose, but the carriers had so many claims for personal injury where the men would get out on top of the cars of a moving train and be injured that they have now made rather stringent rules requiring them to remain in the caboose while the trains are in motion. I don't know that all the roads have those, but most of them have rules and regulations in regard to that.

Q. Well, if they ride in the caboose there is no passenger transportation necessary going, is there? It is just simply the return transportation?

The Witness: We think there is a value in going, because another thing that has been stopped now very largely was the manipulation of these livestock contracts. I have known in the old days when they would split up a train of livestock into shipments of two each in order to provide men with transportation who simply wanted to go to the market; maybe they would return and maybe they would not, but now they have to make a statement that they are bona fide employees of the shippers. At the present time they pass one attendant each way with one car and one attendant both ways with two to five cars, I believe, and two with from six to eleven cars and three above that, which is maximum with any one shipment.

[fol. 411] The expedited service demanded of this class of traffic caused a number of carriers reaching the heavy

stock-producing sections to run what they call stock pick-up trains on a certain schedule; that is, it would run certain days in the week, maybe once or twice a week, to pick up shipments from station to station of from one to as many cars as they happened to have ready, and it is a fact that in many instances there would be so many different shipments on one of these trains that all of the attendants could not be accommodated in the freight train caboose and it would be necessary to add another caboose; in some instances we have added a passenger coach for their special accommodation.

Examiner Oliver: That is unusual?

The Witness: Well, I won't say that is unusual, not on these particular trains. It is unusual for the large shipper who ships in trainloads, I don't mean in that instance. It is these trains which are operated on a special schedule once a week maybe, or once in two weeks. We have it very frequently on our Panhandle line.

Exhibit 74 is a statement of the loss and damage claim payments of the Rock Island lines for the calendar years 1917 to 1920, comparing the payments in connection with the transportation of livestock with the payments resulting from the transportation of other carload freight.

Exhibit 75 is similar in many respects to Exhibit 74, embracing periods varying from one to eight cars or eleven railroads, counting the M., K. & T. and the M., K. & T. of Texas as one road. In the compilation of this exhibit I could not obtain complete figures on all the roads, but have shown such figures as I could obtain, whether complete or not. Complete figures are shown for the E. P. & [fol. 412] S. W. for five years, the M., K. & T. for four years, the M., K. & T. of Texas for three years, the Santa Fe for three years, the Frisco for five years, the Rock Island for five years, the C., B. & Q. for four years, the K. C., M. & O. for two years, the Missouri Pacific for one year, the S. A. & A. P. for two years, and the Southern Pacific for one year. This would be equivalent to a period of 35 years on one road, or of one year on 35 roads, as indicated on page 2, which is a summary of the exhibit. It will be noted that the average for the 35-year period is also shown on the exhibit.

Exhibit 76 is a statement of the number of cars of livestock handled by the C., R. I. & P. during the years 1916

to 1920. This exhibit is to show the extent of the movement and the relative volume of the movement of the various kinds of stock.

Exhibit 77 is a statement of the Rock Island income accounts for the years 1917 to 1920 and for the six months ended June 30, 1921, showing there has been a deficit for each of those periods. This is in support of the testimony offered by a preceding witness that the financial conditions of the railroads are such that a reduction in their rates is of very vital importance to them. The rates as a whole do not, according to this statement, yield the carriers a proper return upon their investment, and any reduction made on any one commodity, unless it can be made up by an increase on another commodity, will further handicap them in their efforts to continue to operate their property and keep up their facilities.

(Exhibits 67 to 77, Witness Dowlin, were duly received in evidence.)

[fol. 413] Cross-examination.

By Mr. Felton:

It would be rather difficult to figure out so as to answer with accuracy why there is such a wide discrepancy between the average net weights per car shown in Exhibit 67, 10.5, 10.3, 10.2, and 10.4, and the same figures in Exhibits 68 and 69. On Exhibit 67 all livestock traffic is taken as a unit commodity, while on Exhibit 69 the different kinds of livestock are separated. You will note that the net average tonnage on sheep and goats is 8.2 and on hogs 8.9. The figures were compiled from the records of our Accounting Department, and the best answer I am able to make is that the single-deck shipments of sheep, goats, and hogs bring down the average on the livestock as a whole. It is true that there is a variation of only two-tenths of a ton in Exhibits 68 and 69, but that is the only explanation I can make.

Certain sections of the Gulf lines of the Rock Island enjoy a considerable traffic in the spring stock shipments or movements to the northern markets, though I couldn't give the relative amount. Without the data before me I should say the heaviest movement is in the summer and the fall. The stocker movement is usually in the spring, I think along in May or June. That movement necessarily

affects materially the average figures of the livestock movement on our line, but I can not say why that period of the year was omitted from Exhibit 72. I asked for a representative period and to get as much as they could, and I presume it was on account of time that there wasn't more. There is considerable work in compiling statistics of this kind, and like the rest of us our Accounting Department is hard pressed for time. It would not have consumed any more time to have taken that period in preference to this, but we, or at least I individually, thought our heaviest livestock movement has actually been in the fall of the year. [fol. 414] I am not willing to admit that these figures are not representative of the situation; take the movement for the year around, and I don't believe that the movement for the entire year would change these figures very materially. I can not explain the wide discrepancy in the other figures under the other commodities, because I did not compile them in detail, I had to get them from the Accounting Department.

Under the column "Ratio of Empty to Loaded Car Miles" in Exhibit 71, where it shows 79.11 for the Frisco in 1920, that is the percentage of the stock car movement to the loaded haul. It means that where loaded cars were hauled 100 miles the empty haul was 81 miles. The showing in Exhibit 70 for the month of October, 1915, was the last period for which the figures were available, so I am informed by the Car Service Department of the Rock Island, *but I don't think* the situation is very materially changed as to the Rock Island. The figures I gave in connection with Exhibit 73 represented the value of transportation at regular passenger rates that was furnished by the lines named during the year 1920 the same as the detailed statement of the Rock Island, except that I gave total figures for the other roads. I didn't give any figures as to the movement of livestock, or the tonnage or earnings, in connection with those figures. In my opinion the fact that caretakers accompany shipments of livestock does not tend to reduce the hazard. As to what is the object of the attendant, I have explained that it is a practice of long standing that was initiated when conditions were materially different from what they are to-day. I don't know whether the carriers' contract with the trainmen prohibits them from requiring the trainmen to look after the cattle.

[fol. 415] In the establishment of rates on livestock, and in hearings and investigations by the various commissions, I think the question of caretakers is touched upon in nearly every hearing as an incidental expense of transportation. The matter of transporting caretakers should be taken into consideration in the structure of the rate, but there is the matter of carrier competition; there are practices and customs that come from away back that it is awfully hard to get away from, even when we believe they are no longer justified.

I don't know whether the Rick Island has a contract with a party at Fort Worth to clean and disinfect the cars, and I don't know what the Rock Island pays for cleaning and disinfecting cars at Fort Worth nor at Oklahoma City. There is a provision in certain tariffs to the effect that we are required by the tariff publication to collect $2.50 from shippers for cleaning and disinfecting single-deck cars and $4.00 for double-deck cars; I don't know whether it is in all of them or not. We have tried several times to find out at hearings previous to this what the actual cost was, and it varied very largely on different roads. I have heard it testified that the cost ranges somewhere from $1.50 to $8.00 or $10.00, but I have never been able to satisfy myself as to the authenticity of those figures. The tariff charge is established on the theory that it was the average charge and it was thought best to publish it on a basis that would clear the cost as a whole, as it would be cumbersome to operate a tariff with different rates at different points or on different railroads.

As to the great difference in the figures under the livestock column in the last section of Exhibit 74, I can only make the same answer that I made to several other ex-
[fol. 416] hibits; I didn't compile this in detail. It was furnished from the authentic accounts of the Rock Island lines, and I can not explain those differences. I could not say approximately how much of that damage occurred on horses and mules, nor what portion was paid for loss and damage and what proportion was paid for shrinkage and loss of market; As a matter of fact, we have always considered and classified that as a damage claim, no separation is made in the Claim Department's accounts, I am informed. I do not believe that a carrier can reasonably claim a higher rate on livestock than on other commodities

because of its being required to pay a claim accruing through its negligence on account of delay if it is purely the carrier's negligence.

I can not explain the difference between the percentage of claims paid to revenue on livestock shown in Exhibit 75 as between the Santa Fe and the T. & P. Those figures were furnished me by those roads. The T. & P. figures are not shown in detail, and the calculations in that particular instance were not made by me. As to Exhibit 76, the movement of sheep in this section of the country in single-deck cars is larger, I believe, than the movement in double-deck cars, both in number of cars and in number of head. In that connection I would say that in many instances two single-deck cars are handled for the rate and minimum weight on one double-deck car under the tariff provisions on some lines, generally because they have not the double-deck car available. It is my impression that the minimum weight on sheep in double-deck cars is the same as on cattle, but the tariff will show. I believe the rate on sheep in double-deck cars is the same as on cattle.

[fol. 417] Examination.

By Examiner Oliver:

My views are the same as Mr. Swenson's as to the necessity for a revision of these rates. As to whether there should be some medium between the rates into Oklahoma and the interstate rates from their to Texas, I think unquestionably that the rates between Oklahoma and Kansas and Kansas-Missouri River points are unduly low, and there are possibly some of the rates from Oklahoma into Texas that are higher than they should be; there should be a medium found. As to the rates into Kansas, that condition has existed ever since I have known anything about it, for the last twenty years; I don't remember when that revision into Texas was made. Those rates were advanced, it seems to me, something like 8 or 9 years ago.

R. E. Buchanan was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination.

By Mr. Wren:

I am General Livestock Agent for the G. C. & S. F. Railroad, which position I have held about 10 years. My railroad experience extends over a period of nearly 36 years, and for 10 years before I became General Livestock Agent I handled livestock claims and was familiar with the movement of livestock over the G. C. & S. F. Railway. The handling of horses and mules is unquestionably more expensive than that of dead freight or of commodities other than livestock. They have to be handled with a great deal more dispatch and care, they are more perishable and more subject to injury, with large damage claims resulting, whereas dead freight is not subject to such liability.

The ratio of claims on horses and mules is much greater [fol. 418] than in the case of other livestock in proportion to the shipments moved. Without compiling it I couldn't give the exact ratio, but I should say that there would be at least three times as many claims on horses and mules as on cattle, hogs, and sheep in proportion to the number of cars handled. The movement of horses and mules into Fort Worth over the G. C. & S. F. and other lines has decreased wonderfully in the last year or two, the bottom fell out of the horse and mule market. The reason for this decrease is that the bottom fell out of the values, the prices; that is all that I ever heard assigned until this hearing, I have heard of other causes. During the period of the war in Europe there was an abnormal movement of horses and mules, much greater than it ever was before or since.

From my knowledge of the handling of horses and mules I don't think there is advantage whatsoever to the railroads for a caretaker to accompany the shipment. I have discouraged that provision in the tariff for quite a number of years. They only encumber the space in the caboose, and that is all the good I have ever seen them do with a few exceptions. I have known a few cases where men got out and looked after a shipment, but only a few cases; in fact, in these days of long freight trains they are afraid to risk it if they want to, and they don't often want to. They would have to get off and go ahead and take chances on getting left and all of that. As to what purpose the caretakers serve from the shipper's standpoint, it is gen-

erally to have a notebook and a Waterbury watch to take notes of delays and rough handling and make evidence for the support of claims; that is all I have ever seen them do.

Cross-examination.

By Mr. Pelton:

In stating that the horse and mule claims amount to [fol. 419] three times as many as on cattle, that is an estimate; I would think fully that. As to whether there might be three claims of $10.00 each on horses and mules and a $30.00 claim on one car of cattle, what I mean is there would be more claims on each number of cars of horses and mules shipped than it would take to produce that many claims out of three times that many cars of cattle. Horses and mules are higher class stock than cattle, ordinarily, and the damage would cost more per animal than it would if they were cattle. In fact, what would constitute a claim on a horse would not be any claim on a cow or steer at all. The hair rubbed off of a steer going to market wouldn't make any difference, but if a horse rubs his tail in the movement of the car, or it is crowded and the hair is rubbed off, he is damaged $25.00 to $30.00 in his tail, the shipper says. I wouldn't undertake to say that the claims on horses and mules are related as $300.00 to $100.00 on cattle, because we handle 10 times more cattle, but I do say it is fully that in proportion to the ratio. In the event we had three $10.00 claims on horses and mules and one $30.00 claim on cattle, it would be fifty-fifty, but that isn't the ratio; claims on horses and mules are heavy.

I didn't say altogether that the real purpose of the caretaker from the shippers standpoint is to ride in the caboose and have a notebook and a Waterbury watch and take notes on delays as a basis for damage claims. Sometimes I have known awfully conscientious, good caretakers to go along for the purpose for which they are supposed to go along with a shipment, but ordinarily they don't get out to look after the stock at all; I said that is the principal part of their activities. I don't think it is really necessary for a shipper to keep tab on these shipments all of the way in [fol. 420] transit to protect his interests. The caretaker gets data that doesn't exist very frequently, he makes the data.

The average number of head of beef cattle loaded in a 36 foot car would be 21 to 25 head; horses and mules would load about 20 in the same size car.—We don't intend to make any difference in the handling of horse and mule shipments in transit and in the handling of cattle, but the same handling accorded cattle sometimes causes damage to horses but not to cattle. I don't know if there is any difference in the expense of handling horses and mules as compared with cattle, other than the additional expense of damages to them and claims, but I am not an operating man. In this section of the country the heavy movement of stock cattle is in the spring, and it is the latter part of the summer and fall principally for beef cattle. The exceptional movements of horses and mules occurs in the fall and spring, I should say.

Redirect examination.

By Mr. Wren:

Regarding the claim payments, it is my testimony that the average claim payments per car on horses and mules is three times as much as the average claim payments per car on cattle. In the case of loss and damage claims on cattle, the allegations are usually delay and rough handling; delay causes them to miss the market, and of course there is always a claim on that. Practically all claims on horses and mules are for injury, alleged injury in transit. Once in a great while we will have a claim for delay where the man claims he was running for certain distinct sale day and missed it.

Recross-examination.

By Mr. Pelton:

Claim payments on cattle for loss of market and shrink on account of delay amount to quite a sum but nothing in proportion to the volume of business done. When we pay [fol. 421] one of those claims we do not acknowledge that it is through the negligence of the carriers in not making the market; I suppose nearly half of the claims I pay on that theory is on a give-and-take basis of generally 50 per cent, where they are small claims and it is less expensive to make that compromise than to contest them.

Defendants rest.

(Over objection the Examiner permitted the filing as a part of Exhibit 36, Witness Pelton, two telegrams from the northern markets and the copies of the Fort Worth Record showing where he obtained the 1921 figures recited in that exhibit.)

PETE YOUNT, being recalled as a witness, testified further in substance as follows:

Direct examination.

By Mr. Pelton:

Exhibit 78 is a list of cars of horses and mules shipped to Pete Yount and associates, Burnett and Yount, North Fort Worth, the freight charges on which were paid and borne by Pete Yount and associates.

(Exhibit 78, Witness Yount, was duly received in evidence.)

J. A. CAULK, being recalled as a witness, testified further in substance as follows:

Direct examination.

By Mr. Pelton:

Exhibit 79 is a list of cars of horses and mules shipped in part to Ross Brothers and in part to Burnett & Yount, Fort Worth, the freight charges on which were paid and borne by me, except for the last three shipments, which belonged to the partnership of Stinson and Caulk, on which the firm paid and bore the charges.

(Exhibit 79, Witness Caulk, was duly received in evidence.)

[fol. 422] C. CLYDE SMITH was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination.

By Mr. Pelton:

My address is Kingfisher, Oklahoma, and as a business I farm and handle horses and mules. I have been shipping

to the Fort Worth market and shipped a number of carloads during 1918 to 1921. Exhibit 80 is a list of the cars of horses and mules shipped to Ross Brothers, Fort Worth, the freight charges on which were paid and borne by C. C. Smith and Sam Scott, partners, by C. C. Smith and C. L. Smith, partners, and by C. C. Smith individually.

(Exhibit 80, Witness Smith, was duly received in evidence.)

J. T. QUIN was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination.

By Mr. Pelton:

My address is Carnegie, Oklahoma, and for the past 15 years I have been engaged principally in the horse and mule business. For 4 or 5 years I have made shipments of horses and mules from various points to Fort Worth. The first page of Exhibit 81 shows shipments of horses and mules from Oklahoma points to Fort Worth on which J. T. Quin and Q. H. Ralston, a partnership, paid and bore the freight charges. The second page is a statement of horses and mules shipped from points shown to Fort Worth on which J. T. Quin paid and bore the freight charges.

(Exhibit 81, Witness Quinn, was duly received in evidence.)

[fol. 423] A. E. GOLDSMITH was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination.

By Mr. Pelton:

I live at Pond Creek, Oklahoma, and have been in the horse and mule business there 12 or 14 years. During the last four or five years I have made numerous shipments of horses and mules to Fort Worth. Exhibit 82 is a list of shipments of horses and mules from Pond Creek to Fort Worth on which I paid and bore the freight charges.

(Exhibit 82, Witness Goldsmith, was duly received in evidence.)

F. A. HARP was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination.

By Mr. Pelton:

I live in Fort Worth, where I am in the horse and mule business and have been for a number of years. During the past four or five years I have made numerous shipments of horses and mules to Fort Worth. Exhibit 83 is a list of cars of horses and mules shipped to Ross Brothers, Fort Worth, the freight charges on which were paid and borne by Harp & Martin, a partnership composed of J. S. Martin and myself.

(Exhibit 83, Witness Harp, was duly received in evidence.)

D. I. PORTER was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination.

By Mr. Pelton:

My residence is Fort Worth, where I was in the horse and mule business for about 12 or 13 years until about a [fol. 424] year ago. During that time I made numerous shipments of horses and mules to Fort Worth. Until about 1916 I had a partner, but since then it was my individual business, and I individually paid and bore the freight charges on all shipments that I made to Fort Worth.

(Over objection, a memorandum of testimony in I. & S. Docket No. 958, pertaining to claims paid on livestock and percentage of freight charges, was duly received in evidence in rebuttal as Exhibit 84, Witness Pelton.)

Mr. Pelton: Under the column page this exhibit designates the page in the record of I. & S. No. 958. The names at the left margin are those of the witnesses testifying.

There are only one or two points there that I will point out, and one is Mr. Garvin's testimony on page 922, where he shows the total payments on all livestock as 19.72 per cent. The percentage of that 19.72 per cent paid on cattle was 75.2, and on all other livestock, including horses and mules, it would be 24.8 per cent of 19.72 per cent of the whole. This exhibit is filed just as a memoranda to direct the Commission's attention to my information along that line which was testified to in I. & S. No. 958.

Mr. Scrivner: The only purpose of this exhibit is to give some information as to the claim payments made on horses and mules in relation to other livestock, and not as to the rate situation nor as to the conditions as they may exist to-day.

(Whereupon, at 2:50 o'clock P. M., January 21, 1922, the hearing of the above entitled matter was closed.)

[fol. 425] EXHIBIT EE

Before The Interstate Commerce Commission

Docket No. 13619

ROSS BROTHERS HORSE AND MULE COMPANY, et al.,
Complainants,

vs.

UNION PACIFIC RAILROAD COMPANY et al., Defendants.

Fort Worth, Texas, May 16, 1922.

Before Burton Fuller, Attorney-Examiner.
Met pursuant to notice.

APPEARANCES

(Omitted, being included among appearances recited in 93 I. C. C. 479.)

PROCEEDINGS

Examiner Fuller: The Interstate Commerce Commission has assigned for hearing at this time and place Docket No. 13619, Ross Brothers Horse and Mule Company et al. versus Union Pacific Railroad Company et al.

It is alleged that the rates charged complainants for the transportation of seven carloads of horses and mules shipped during the period March 18 to November 17, 1920, from the various points in Kansas named in Exhibit A attached to the complaint to North Fort Worth, Texas, were and are unjust, unreasonable, unjustly discriminatory and unduly prejudicial, in violation of sections 1, 2, and 4 of the Interstate Commerce Act, in that the rates charged were less than the rates applicable from intermediate points.

(Note: It having been stated on behalf of complainants that the parties and the issues involved in this complaint are identical with those before the Commission in Docket No. 12358, Texas Livestock Shippers Protective League [fol. 426] et al. versus Director General, as Agent, Abilene & Southern Railway Company et al., defendants, by stipulation formally entered of record between complainants and defendants this complaint was submitted upon the record heretofore made in Docket No. 12358 without additional evidence being taken.)

(Thereupon, at 11:50 o'clock A. M., May 16, 1922, the hearing in the above entitled matter was closed.)

[fol. 427] EXHIBIT FF

Before The Interstate Commerce Commission

Docket No. 13627

BURNETT-YOUNT HORSE AND MULE COMPANY et al.,
Complainants,

vs.

ABILENE & SOUTHERN RAILWAY COMPANY et al., Defendants.

Fort Worth, Texas, July 20, 1922.

Before Fred N. Oliver, Attorney-Examiner.
Met pursuant to notice.

APPEARANCES

(Omitted, being included among appearances recited in 93 I. C. C. 479.)

PROCEEDINGS

Examiner Oliver: The Interstate Commerce Commission has assigned for hearing at this time and place Docket No.

13627, Burnett-Yount Horse and Mule Company et al. versus Abilene & Southern Railway Company et al.

It is alleged that for the transportation of horses and mules, in carloads, between interstate points and points in Texas, and between points in Texas and points in Louisiana, Arkansas, Oklahoma, Kansas, Missouri, Iowa, Nebraska, Wyoming, Montana, Nevada, Colorado, New Mexico, Arizona and California, and between points in the southeastern states south of the Potomac and Ohio Rivers and east of the Mississippi River and points in Texas, the rates, rules, and regulations applicable to such shipments are unjust, unreasonable, unjustly discriminatory and unduly preferential or prejudicial, and that in many circumstances the through rates exceed the aggerate of the intermediate rates and for shorter hauls exceed those contemporaneously maintained for longer hauls via the same routes, [fol. 428] and that since February 28, 1920, complainants have made numerous shipments of horses and mules between many of said points and for the transportation thereof have been subjected to the payment of rates which were and are unjust, unreasonable, unjustly discriminatory and unduly preferential or prejudicial in violation of sections 1, 2, and 3 of the Interstate Commerce Act, and in violation of the aggregate of the intermediate rates provision of section 4 of said Act.

The Commission is asked to prescribe just and reasonable rates for the future, and to award reparation. Is that a correct statement of the issues?

Mr. Pelton: It is correct, except that by amendment recently filed the complaint was abandoned as to the rates in the Southeast, except from western and southwestern points to eastbank points on the Mississippi River, namely, Memphis, Natchez, Vicksburg, and New Orleans.

Examiner Oliver: Gentlemen, there has also been assigned for hearing in connection with this case such portions of fourth section applications by which carriers named as parties thereto asked for authority to continue to charge for the transportation of livestock, carloads, between points in Texas, on the one hand, and points in Louisiana, Arkansas, Oklahoma, Kansas, Missouri, Nebraska, Colorado, and Kansas, on the other, rates which are in contravention of the provisions of the amended fourth section

of the Interstate Commerce Act. Application numbers referred to are 461, 462, 621, 673, 678.

Mr. Wren: At this time it is the sense of the defendants that this complaint involves exactly the same issues as the complaint in the former horse and mule case, Docket No. 12358, and for that reason we move to consolidate. As [fol. 429] I understand, from the complainants' standpoint the only difference between the two cases is that in the former case rates to and from Fort Worth were involved only, and this is rates to southwestern territory.

Mr. Pelton: The other case was limited to Fort Worth shipments.

Examiner Oliver: It seems to me that this complaint covers quite a bit of additional territory that was not covered in the other complaint.

Mr. Pelton: No additional territory.

Examiner Oliver: Well. as an illustration you have Wyoming, Montana, Nevada, California. As I recall, there was not one iota of testimony on rates from Montana or Wyoming in the other complaint at all.

Mr. Pelton: We will agree to the consolidation.

Examiner Oliver: It is also the wish of both parties to introduce a little additional testimony; is that correct?

Mr. Pelton: Yes, sir.

Examiner Oliver: Gentlemen, I can see no objection to the consolidation and the motion will be granted.

B. D. Pelton was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination (pro se):

I have had some 25 or 30 years experience handling rates in Texas and the Southwest with the various railroads, industries, and individuals for the past six years as Traffic Manager for the Texas Livestock Shippers Protective League. Exhibit 1 is a map of the state of Louisiana, including Vicksburg and Natchez, and shows the principal lines, with the principal stations and junctions and the [fol. 430] mileage between. On the first page is shown the Alexandria situation, the distances via the different routes and how the rates apply, and it shows that the Natchez

rates apply through Alexandria via Addis and Ferriday, but the Natchez rates do not apply via Alexandria. It shows other lines also where the rates apply via the L. & A. but not via the T. & P. and Shreveport. It also shows via Missouri Pacific points to Lake Charles and Georgetown and via Vidalia to Rayville.

The next sheet shows the Natchez situation. The rates apply via the T. & P., the Katy, and the Cotton Belt to Shreveport, except the 10 per cent reductions do not apply by the Cotton Belt; it applies to all points on the L. & A. except south of Pacton to Tioga. That is a little piece of track there, only 30.8 miles, but the rates do apply to Alexandria, although not via the L. & A. The T. & P. exceptions, which include Alexandria via Shreveport, that is a special exception there, but none that includes the Texarkana routing; the Natchez rate will not apply all the way T. & P. to Alexandria, yet you can go on 200 miles further to Natchez through Alexandria on the Natchez rate.

On the last sheet the Vicksburg situation shows the mileage and the routes; the only practicable route is the T. & P. and V. S. & P. It shows the westbound rates there, but there is a considerable difference. There is a local rate to Vicksburg of 62.5 and a proportional rate of 43.5 when shipments are destined to southeastern points, whereas the westbound rate is $1.095. This Vicksburg rate, 62.5. applies to 15 other points in Louisiana west on the V. S. & P. to Choudrant, about half way to Shreveport, right next to Ruston. You will find that the Natchez rate applies Missouri Pacific via Rayville west to Choudrant, so we [fol. 431] have both the Vicksburg rate and the Natchez rate between Rayville and Choudrant, a distance of about 50 miles. The westbound rate is the New Orleans territorial class A rate. On shipments moving Fort Worth to Alexandria they have charged 83.5 cents; the Natchez rate would be 54 cents, making an overcharge of $76.00 per car. These shipments are simply offered to the T. & P., and it takes them and hauls them through without any advice to the shipper as to the conflict between the routing and the rate. The tariff does not provide that the Nachez scale shall apply at Shreveport and those other points, but provides that the Natchez rate shall apply, which of course would be higher for those points 150 to 200 miles this side of Natchez.

Exhibit 2 is a statement showing rates on horses and mules between Arizona, New Mexico, and Texas, interstate and intrastate. The first section is the Rock Island schedule between Kansas, Oklahoma, and New Mexico on the Rock Island and the E. P. & S. W., between New Mexico points on the Rock Island, and on the E. P. & S. W. in New Mexico and Texas, El Paso. In the second column, which is numbered 1, is the Texas or Shreveport scale. Section 2, the next section, is the combination and shows the percentage of the New Mexico rates. Section 3 is the Santa Fe schedules in New Mexico on the Santa Fe & Rio Grande and to El Paso on the Rio Grande, El Paso & Santa Fe.

Taking section 2, for instance, the 69.85 is the combination of the New Mexico Rock Island rate and the Shreveport rate into Texas for that distance, using equal mileage; thus, at 50 miles it would be $45.00 under the Rock Island and $42.55 under the Shreveport, and then is shown the percentage that combination would be of the Shreveport scale if it applied all the way. The other figures are the [fol. 432] same thing for the different roads under the different schedules.

Exhibit 3 shows rates on horses, mules, and cattle between New Mexico points and Fort Worth, Texas, with the horse and mule percentage of the cattle rates, and the Shreveport scale; also, revenue on cattle and horses and mules under combination rates and the Shreveport scale, also single line based on short jointline mileage. Take the rate from Glen Rio, Texas, which comes under the Shreveport scale. The next station beyond Glen Rio is Endee, N. M., from which point the horse and mule rates are combination and the cattle rates are through rates. They were established by the Railroad Administration and are the same as the Shreveport scale.

All these combinations on the first page are based on Amarillo, and it shows what the through rate under the Shreveport scale would be, say from Endee, 111.55 against combination of 149.60 that we have to pay, the percentage being 134.1, while the percentage of the cattle rate is 149.05; the revenue runs along in the same way in proportion. Taking the second sheet, the last four stations are Santa Fe stations on the branch line points north of Deming, and it is just beyond the line of the Shreveport cattle rate.

They extend to Rincon, where the branch line of the Santa Fe extends over to Deming. The cattle rate from Rincon is 50 cents; that is the Shreveport scale established by the Railroad Commission. It is a short distance over there to Deming, about 40 miles, but the Shreveport rate does not apply at points that far west. However, the Santa Fe publishes these specific rates, which are just slightly higher than the Shreveport scale, and also takes in fourteen other points around that territory.

[fol. 433] On horses and mules we must pay the combinations, and the Deming combination is figured on the Southern Pacific and El Paso, but the other Santa Fe points we must figure Rincon or El Paso, which makes a rather roundabout way, and you will notice it runs the freight charges up very considerably. From Rincon the combination is $180.75, but from Silver City the rate is $212.75, and it is only 100 miles further. The percentages and revenue from these stations are shown in the same manner.

Exhibit 4 shows the rates on horses and mules between Oklahoma City, Wichita, and Fort Worth and points in New Mexico. The first bunch there, Santa Fe and so forth, are Santa Fe points. It shows Oklahoma City, Fort Worth and Wichita rates and mileage between those points. The other three stations are Santa Fe points in this same territory covered by No. 3, just beyond Rincon. It shows the rates and mileage to Wichita as compared with the rates and mileage to Fort Worth. These are between rates. It is simply a comparison of the rates and to show the disadvantage the Fort Worth market labors against the more favorable rate to the northern states.

In the tariff where they are publishing these rates on a combination, especially the Vicksburg combination, I find here a rate from Kansas City to Elgin which figures $215.55, and the combination Kansas City to Bartlett figures $196.40. The best thing we can get from Kansas City to Fort Worth is the combination on Russell Creek, $244.00, which has been published, which gives these stations in southern Texas a great advantage over Fort Worth shippers. They have also published rates from Carondelet, St. Louis and East St. Louis to Brownsville and Laredo; that is the combination on Shreveport and [fol. 434] figures $235.10. To Brownsville, in the extreme southern part of Texas, the haul is probably just about

double what it is to Fort Worth, but still the rate figures considerably cheaper to Brownsville than to Fort Worth. Those people down there on those combinations can ship from these northern markets to those points and ship back through Fort Worth to points beyond Fort Worth cheaper than we can get from Illinois to Fort Worth. In the same tariff combinations have also been published from Joplin and Wichita to Fort Worth. That is Supplement No. 14 to Southwestern Lines Tariff No. 29-Y, F. A. Leland's I. C. C. 1491.

(Exhibits 1 to 4, Witness Pelton, was duly received in evidence.)

Cross-examination.

By Mr. Witcher:

In comparing the rates in Exhibit 4 from these New Mexico points to Oklahoma City, Fort Worth and Wichita, I have simply offered them as comparisons showing undue disadvantage to Fort Worth and undue preference to Wichita and Kansas City; I don't express any opinion on the question of whether the rates to Oklahoma City and Wichita are proper.

Cross-examination.

By Mr. Swenson:

As to the rate of $184.00 from Clovis to Fort Worth for a distance of 439 miles shown in Exhibit 4, those rates are all combinations; there are no through rates. I think that combination from Clovis to Fort Worth would figure on Amarillo rather than on Farwell.

John C. Hicks was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination.

By Mr. Pelton:

My residence is in Fort Worth, Texas, and I am Secre- [fol. 435] tary of Ross Brothers Horse and Mule Company.

I have been with Ross Brothers five years last January. As to how the horse and mule commission business is handled in North Fort Worth, the shipper ships his stock to us to sell on commission; the stock are received and an account is opened up with the shipper and all charges are made to that account, that is, freight, feed, yardage, etc. Ross Brothers Horse and Mule Company also handles shipments for themselves on which they paid and bore the charges. Exhibit 5 contains a list of those shipments for the last two years. Exhibit 6 contains one car shipped to W. R. Ross, on which the freight charges were paid and borne by him. Exhibit 7 contains a list of eleven cars shipped to Harp & Martin, who paid and bore the freight charges thereon.

(Exhibits 5 to 7, Witness Hicks, were duly received in evidence.)

H. M. White was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination.

By Mr. Pelton:

I am bookkeeper for the Burnett-Yount Horse and Mule Company, which position I have held three years. I am thoroughly familiar with the handling of the consignments of horses and mules at the Fort Worth market. When a load of horses is shipped to us collect, all feed charges, freight, commission, and other selling expense is paid by the commission company and charged to the account of the shipper. The net proceeds are then mailed to the man who shipped the stock or are delivered to him if he is here in person.

Exhibit 8 contains a list of shipments on which the freight charges were paid and borne by Burnett-Yount [fol. 436] Horse and Mule Company with the exception of the car first listed, which will be eliminated. Exhibit 9 contains a list of shipments to J. M. Yount, Yount and Smith, and Yount and Elkins. I know they paid and bore the freight charges on those shipments with the exception of C. C. Smith with Yount and Smith; I am not informed as to him. Exhibit 10 covers two cars of horses and mules

shipped to S. E. Ross, Fort Worth, on which he paid and bore the freight charges.

(Exhibits 8 to 10, Witness White, were duly received in evidence.)

J. M. YOUNT was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination.

By Mr. Pelton:

I am in the horse and mule business at Fort Worth, and have been in that business about 8 or 9 years. For the past 3 years and a half I have been with the firm of Burnett-Yount Horse and Mule Company. Except for the shipments from Kingfisher, Okla., to New Orleans, I paid and bore the freight charges on all shipments listed in Exhibit 11. On the shipments from Kingfisher, as to which C. Clyde Smith was my partner, I paid and bore half the freight charges.

(Exhibit 11, Witness Yount, was duly received in evidence.)

W. O. ROMINGER was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination.

By Mr. Pelton:

I am in the horse and mule commission business at Fort Worth, in which I have been engaged about 18 years, operating as W. O. Rominger & Company. Exhibit 12 contains a list of the shipments of horses and mules upon [fol. 437] which the firm of W. O. Rominger paid and bore the freight charges.

(Exhibit 12, Witness Rominger, was duly received in evidence.)

L. Luckett was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination.

By Mr. Pelton:

I am in the horse and mule business at Alexandria, Louisiana, and have been for several years, but for the past three years have been in the partnership of Luckett and Hunter. That partnership paid and bore the freight charges on the shipments of horses and mules from Fort Worth to Alexandria listed in Exhibit 13.

(Exhibit 13, Witness Luckett, was duly received in evidence.)

J. B. Jackson was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination.

By Mr. Pelton:

I live in Wynnewood, Oklahoma, and trade in horses and mules and cattle. I have been in that business for ten years at that place. Exhibit 14 contains a list of the shipments of horses and mules made by me and by the firm of Gibson and Coyle; I paid and bore the freight charges on the shipments made by me, and I know that the firm of Gibson and Coyle paid and bore the freight charges on shipments made by that firm.

(Exhibit 14, Witness Jackson, was duly received in evidence.)

J. M. Grogan was thereupon called as a witness, and having been duly sworn, testified in substance as follows:

Direct Examination.

By Mr. Pelton.

I live at Arlington, Texas, where I am and for 17 years [fol. 438] have been in the horse and mule business. Dur-

ing the past year and a half I have made numerous shipments of horses and mules to Louisiana. Exhibit 15 contains a list of shipments made by Ross Brothers for my account to McHenry Horse and Mule Exchange at New Orleans, and I paid and bore the freight charges on those shipments.

(Exhibit 15, Witness Grogan, was duly received in evidence.)

J. A. CAULK was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination.

By Mr. Pelton:

I live at Hennessey, Oklahoma, and am in the horse and mule business and a farmer, and have been for 21 years. Exhibit 16 contains a list of shipments made by me to Burnett-Yount Horse and Mule Company at Fort Worth in the last two years and a half, on which I paid and bore the freight charges.

(Exhibit 16, Witness Caulk, was duly received in evidence.)

M. G. WHITTINGTON was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination.

By. Mr. Pelton:

I am in the commission business at Fort Worth, in which business I have been engaged since 1908. Exhibit 17 contains a list of three shipments of horses and mules shipped to Fort Worth on which the Fort Worth Horse and Mule Company paid and bore the freight charges.

(Exhibit 17, Witness Whittington, was duly received in evidence.)

[fol. 439] Complainants rest.

F. A. SWENSON was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination (pro se):

I am Chief Clerk in the General Freight Department of the P. & S. F. Railway Company, Amarillo, Texas. Exhibit 18 contains a proposed scale of rates on horses and mules, carloads, for single line application to be applied within the territory covered and subject to the same application as now covered by F. A. Leland's I. C. C. No. 1497 on other livestock. In connection with this exhibit, I wish to state that the application of the mileage scale in these four tariffs is shown under the heading of the general application of rates in Leland's tariff, and of course in Fonda's I. C. C. No. 128 it applies between Texas points on interstate traffic, and also upon intrastate traffic and between Texas points and the so-called Shreveport group. This statement further shows the rates in cents per 100 pounds and the minimum per car-mile earnings upon a minimum car not exceeding 36 feet 7 inches in length. This proposed scale is the same as that proposed in Docket No. 12358 reduced 10 per cent. We haven't had time to go into the joint line feature and thought we would leave that up to the Commission. It would not be much trouble to determine what the joint line arbitrary should be; I wouldn't want to say offhand without making a few figures.

Exhibit 19, in connection with which I make reference to Exhibit 62 introduced by me in Docket No. 12358, shows the class rates and the average of all classes from Kansas City to St. Louis and from Kansas City to Chicago and various Mississippi Valley points and to Texas and Oklahoma [fol. 440] points, also from Denver to Texas points. On page 2 of that exhibit is shown the percentage of the average class rates from Kansas City to these various destinations as related to the average class rates from Kansas City to St. Louis and from Kansas City to Chicago. On the third page are shown rates on horses and mules from Kansas City to St. Louis and Chicago and the other destinations covered by page 1. The percentages shown on page 2 are applied to the horse and mule rates from Kansas City to St. Louis and Chicago in order to show what would be the rates on horses and mules to the other destinations upon that basis.

Exhibit 19 is in support of Exhibit 20, which shows the carriers' proposed group adjustment from Kansas City to various southwestern destinations. The Texas carriers feel that the horse and mule rates from Kansas City to Texas can not with propriety be fixed without also fixing the rates from Kansas City and St. Louis, not only to Louisiana points west of the Mississippi River but also from Kansas City and St. Louis to Memphis, Vicksburg and New Orleans. Rates on horses and mules from Kansas City and St. Louis to Louisiana west of the river, Lake Charles being one of the points shown in Exhibit 20, and to New Orleans, for instance, are very much lower than from Kansas City and St. Louis to Chicago, as measured by the class rates, and the Texas carriers ask that the Commission give that feature consideration in order that our adjustment from Kansas City and St. Louis to Texas will not be affected by this Mississippi Valley and Louisiana adjustment.

As to whether the carriers checked in the rates following the Wichita case, I understand that the Louisiana lines checked in some of the rates into Louisiana in I. & S. No. [fol. 441] 1483, but they did not make any changes in the measure of the rates from Kansas City. If they have since made another attempt I don't know anything about it. The horse and mule adjustment over the entire Southwest is in bad shape. We made that statement at the hearing in Docket No. 12358, and if anything is going to be done with the rates from the Missouri River and St. Louis to Texas, speaking for the Santa Fe lines, we ask that the Commission give consideration to this other territory in reaching conclusions with respect to the rates to Texas. The rates from Kansas City to New Orleans, for instance, will influence the rates to Texas, and the rates we propose from Kansas City to Fort Worth and Beaumont are not out of line with the rates on other commodities.

(Exhibits 18 to 20, Witness Swenson, were duly received in evidence.)

Cross-examination.

By Mr. Pelton:

I don't remember offhand what is the rate of progression of the Shreveport scale, but if it is 4 cents per 100 miles for the last several hundred miles of that scale, I would con-

sider the rate of progression shown in Exhibit 18 as reasonable, 16.5 cents from the first 100 to the second 100 miles, 11 cents for the next 100 miles, 9 cents for the next 100 miles, the next hundred 7, and the next hundred 8. When you consider that the rate on horses and mules from St. Louis to New York for a distance of 1050 miles is $1.21 after the 10 per cent reduction, I would say that the scale we have proposed here is fully justified. Furthermore, the rate from Kansas City to St. Louis, a distance of 278 miles, where the traffic density is probably two, possibly three times as great as in Texas, is 30.5 cents, I would say that the rate of progression shown in this proposed scale is not out of line. Taking the New York-St. Louis rate of $1.21 [fol. 442] less 10 per cent, or approximately $1.09, it probably would be true that the progression of the proposed scale for the last 800 miles, 8 cents, would go beyond the $1.09, and it would be correct to do so. The traffic density in the Southwest is considerably less than it is from St. Louis to New York, and we would be entitled to a higher rate for 1050 miles than the rate from St. Louis to New York.

As to whether a rate of progression of 11 cents per 100 miles is reasonable in this scale where the Commission fixed the rate of progression at 4 cents per 100 miles for the last four or five hundred miles in the Shreveport scale, I contend that the Shreveport scale on horses and mules is entirely too low for application, not only between Texas points and between Texas and Shreveport, but between any territory in the Southwest. If we apply the rate of progression we propose here, the rate at 750 miles or 600 miles would not be excessive. As to what we expect to apply beyond 600 miles, in Docket No. 12358 we said that the proposed scale for no greater distance than 600 miles would probably suffice for the present because of the group adjustments. Of course, in making up this group adjustment we could not expect to sit down and give the entire rate fabric consideration all over the Southwest. We thought it would be proper to show, for instance, what the rates would be from Kansas City and St. Louis to Texas, those being the two principal horse and mule shipping points from which Texas and Louisiana are receiving their supply, but should it be necessary to extend the scale the carriers feel that the extension should be to not more than 1,000 miles at a grada-

tion of 2 cents per 100 miles for each 25 mile group, this gradation applying to the scale without the 10 per cent reduction. If that gradation were used it would make a rate [fol. 443] of $1.23 for a haul of 1,000 miles, which as I have said before will compare very favorably with the rate of $1.21 from St. Louis to New York for a distance of 1050 miles.

With this schedule stopping at 600 miles, I don't know that applying the group rate would create an excessive jump for the next distance over 600 miles. We are not proposing the application of this mileage scale from Kansas City to Texas; we are proposing group rates, for instance, from Kansas City to Texas points. To Houston, say, we are proposing a rate of $196.50 from both Kansas City and St. Louis. We are proposing the application of this mileage scale only in the territory covered by Leland's tariff No. 76; that would not go west of the main line of the Santa Fe in New Mexico. It is true that the 600 mile scale would not reach those New Mexico points, but we would try to adjust the rates upon the group basis beyond 600 miles wherever that was found necessary, and if the Commission should feel it necessary to extend the scale the carriers believe the gradation should be as previously stated, even though it is twice as much as in the Shreveport scale. The Shreveport scale is too low; in fact, for the maximum haul it is less than it is upon beef cattle for 1,000 miles.

Examination.

By Examiner Oliver:

The proposed scale is based upon the 9702 class B rates reduced 10 per cent.

Cross-examination.

By Mr. Pelton:

The proposed grouping beyond the 600 mile scale will take in the Colorado situation and also western Kansas, we could take in Arizona. It may be that the Texas shipper is paying combination rates now from Arizona the same as he does from New Mexico; possibly the combination rates are reasonable rates.

[fol. 444] Redirect examination.

By Mr. Witcher:

In stating that I don't think the gradation of 8 cents per 100 miles is excessive if we are going to extend this scale from New Mexico points, that is based upon the fact that the traffic density out in that territory is still less than it is in central Texas or in Oklahoma or Kansas, absolutely. In fact, in proposing this scale for application between the territory covered by Leland's Tariff No. 76, we looked at this thing from a broad standpoint, and if any kind of a scale should be adopted we have conceded several points by including the territory in New Mexico, as we could very well ask for a higher scale of rates from New Mexico into Texas or these other states on horses and mules.

A. T. Witcher was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination (pro se):

I am Chief Clerk to the General Freight Agent of the M., K. & T. Railway Company of Texas at Dallas. In Docket No. 12358 a statement was filed showing the traffic density of all the railroads in the United States, with the percentage relations between the various districts. That statement was not brought up later than the year 1919, and I have reproduced the statement so as to include the year 1920, which is the latest we can secure at the present time, that is, when you use the traffic density in Texas. I could have secured the traffic density for 1921 in the different districts, but our comparison is with Texas, which we could not secure from the Railroad Commission of Texas. That is Exhibit 21.

In the original case we also filed a statement showing the [fol. 445] earnings found reasonable by the Commission in the Dallas-Fort Worth case, Docket No. 7628, and as Exhibit 22 I have reproduced that statement so as to bring the rates up to date as effective July 15, 1922. This statement does not need any further explanation except to say it shows the earnings on other commodities per car and per mile.

Exhibit 23 is a comparison of the present rates and earnings on grain, carloads, from representative Oklahoma points to Fort Worth and to Galveston for export with the rates and earnings between the same points based on a mileage scale fixed by the Commission in Docket No. 12244. Exhibit 24 contains the same information as to rates from representative Kansas points. The decision in Docket No. 12244 has been recently issued, and the statements show that the present and proposed basis under the 12244 scale, compared with the earnings on horses and mules, as shown in an exhibit filed by a previous witness, demonstrate the reasonableness of the proposed scale on horses and mules which the carriers have submitted.

(Exhibits 21 to 24, Witness Witcher, was duly received in evidence.)

Cross-examination.

By Mr. Pelton:

The purpose of Exhibit 22 is to show that the earnings per car and per car-mile on horses and mules, as filed by this witness, are not unreasonable in comparison with the earnings per car and per car-mile found reasonable in Docket No. 7628. I don't show those earnings on this exhibit, but they are shown in Exhibit 18 for the same distances.

F. B. Clark was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

[fol. 446] Direct examination (pro se):

I am Chief Clerk to the Assistant Freight Traffic Manager of the Missouri Pacific Railroad, headquarters St. Louis. While I am somewhat embarrassed by not having received before reaching Fort Worth the amendment eliminating the prayer for the same rates on horses and mules as on beef cattle, and looking more towards the establishment of the Shreveport scale, I have prepared in memorandum form a statement of conditions on horses and mules in the Southwest, and particularly with respect to beef cattle, and I ask that my testimony, wherever men-

tion is made of beef cattle, be treated rather as for comparative purposes than as taking in consideration the measure of the rates themselves. This is for the reason that they are both livestock, and both are transported, that is, cattle versus horses and mules, in the same class of equipment, namely, stock cars, and they both require the same expedited service.

To afford some light as to the movement in the first place of horses and mules throughout southwestern territory as compared with the large movement of cattle and calves, for example, the company I represent operates over 7200 miles of rails, a good portion of which is in southwestern territory, that is, the states of Arkansas, Louisiana, and Oklahoma. We likewise operate in Missouri, Kansas, Nebraska, and Colorado, and to some extent in Illinois.

To afford some idea of the tonnage handled of horses and mules versus cattle and calves, I quote the following figures for the first eleven months of 1921, which is all that were available when I prepared the data: Horses and mules 27,448 tons; percentage of total tons of all classes of [fol. 447] traffic handled over the entire system, .11; revenue derived therefrom, $144,027.00; percentage of total revenue on all traffic, .19, — as compared with cattle and calves, 307,427 tons; percentage of total tons handled, 1.22; revenue derived therefrom $1,206,564.37; percentage of total revenue on all traffic, 1.58. From these figures it can readily be noted that the movement of horses and mules as compared with cattle is substantially nil. Our horse and mule traffic is principally in the state of Missouri; in fact, Missouri is known as one of the principal states of the Union for breeding and raising horses and mules, St. Louis being the recognized horse and mule market of the world.

We have an extensive movement from points within the state, such as Marshall, Boonville, Pleasant Hill and Harrisonville, to St. Louis, and, with due regard to Mr. Swenson's testimony as to the density of traffic between Kansas City and St. Louis, I dare say that the density of traffic on horses and mules between Kansas City and St. Louis, the two largest markets of the United States to-day, would be without exaggeration fifty times as great instead of twice as great on all classes of traffic. These horses are shipped

to St. Louis and sold for the most part on the St. Louis market and moved to the East and Southeast, only a few cars as compared with the total movement going to Texas. We understand this is likewise true of the movement from Texas into the St. Louis market with the possible exception of range horses.

For this reason the carriers have not seen fit to establish a general commodity rating on horses and mules throughout southwestern territory, except possibly to the principal markets such as St. Louis and Kansas City, where as a general proposition commodity rates have been estab- [fol. 448] lished. This has left at certain intermediate territory between Texas and the principal markets, St. Louis and Kansas City, a class rate adjustment, primarily by reason of there being no movement. This is not true of the livestock adjustment, there being provided a general line of commodity rates on livestock to the larger markets such as St. Louis, Kansas City, Chicago, etc.

Again, having particular reference to cattle and calves, the carriers in a goodly number of instances received on their own rails a double haul on livestock. For example, in May of this year there was a movement of 25,000 head of cattle, and in June a movement of 32,000 head passing through the Pueblo, Colorado, stockyards from Texas, going to Montana and Wyoming, on which stock the carriers will ultimately receive their full tariff rate as second haul. There is likewise a large movement of Texas cattle to Oklahoma and Kansas during the early spring months to what is known as the Flint Hill District, extending, for example, from Osage City to Herrington, Kansas, from Toronto to El Dorado, Kansas, and from Caney to Dexter, Kansas; that is, the eastern central portion of Kansas. In 1921 this movement consisted of something like 1100 cars along the rails of our company alone. In 1922 to date we have in this vicinity something like 2750 cars on our rails, on all of which we look forward to receiving the full tariff rate on beef cattle to the markets of Kansas, St. Louis, or Chicago, not to say anything of the products of such cattle in the shape of fresh meats and packing-house products as a third movement proposition.

Then we have the values to count on in case of loss or damage. That is particularly true of horse and mule traffic. In the Consolidated Livestock cases in the East and

[fol. 449] Southeast, I. C. C. Docket Nos. 9966, 9967, 10090 and 10469, extending through an investigation period from 1919 to 1921, inclusive, a value of $4,000.00 per car, considered a fairly low estimate of the average value per car of horse and mule shipments, was used. This value is evidently not out of line, as we note under date of July 1st that sugar mules were quoted on the St. Louis market as ranging from $175.00 to $225.00, mine mules from $150.00 to $200.00, draft mules being much higher, and on this basis, using 25 mules to a standard car, their value would be $4,375.00 per car.

On this same market there was quoted in comparison, 13 cars of Texas steers priced from $5.75 to $6.00 per hundred, and using $6.00 as an average on an estimated weight of 800 pounds per steer, which is a medium size, would mean $48.00 an animal, and counting 30 steers of this weight to the car would mean a value in the neighborhood of $1,400.00 plus, so that the risk of handling the horses and mules from a claim standpoint, which with our company we understand runs ten to one on horses and mules versus other ordinary livestock, would mean considerable from a revenue standpoint.

Horses and mules are peculiarly liable to loss and damage in transit in the way of injury to themselves or each other while loading and unloading and are subject to kicking or biting each other after loading. When injured they are generally a total loss and even if scratched, bruised, or with manes damaged by being eaten off, or otherwise, which is often the case, the value of such animals is therefore seriously impaired, and this is one of the many reasons why claims against the carriers for loss or damage to horse and mule shipments are exceedingly large in proportion [fol. 450] to the earnings derived from the transportation of other classes of traffic.

The cost of handling horses and mules is extremely expensive as compared with the handling of dead freight, and this cost has steadily advanced as a result of the increased cost of transportation due to the larger class of freight engines with which all roads are equipping themselves and a heavier loading of substantially all classes of traffic, which necessarily offsets to some extent the increased cost of transportation. At the same time, in the handling of the horse and mule traffic expedited service has been required,

and there has been substantially no increase in the loading weight on horses and mules. Our red ball service is in the neighborhood of 56 hours between Fort Worth and St. Louis, while on solid trains of livestock consisting for the most part of Texas cattle this time is cut down to a considerable extent. We can always count on 24 to 36 hours longer on what is known as dead freight. This expedited service costs big money.

Then again, under the law, on shipments from Texas to St. Louis or even Memphis it necessitates a stopping at Little Rock for feed and water, which requires the unloading and loading of such stock, which is not true of dead freight. Furthermore, in case we fall down on our contract schedules so far as horses and mules are concerned, it means additional unloading for feed and water. It is a well known fact that horses and mules can not go the same length of time without feed and water as can other classes of ordinary livestock, having particular reference to cattle. As is well known, cattle have what is commonly termed a double stomach, and can go without water for two or three days without any serious damage being done. [fol. 451] Between certain intermediate territory, as between the larger markets of St. Louis and Kansas City on the one hand and Texas on the other, we have a higher rated territory, as previously explained, in which class A obtains. Attention is called to the fact that second class rating has been applied on carload shipments of horses and mules between points in Central Freight Association territory and Eastern Trunk Line territory for some 20 years or more, on which basis there has been a free movement of traffic. This basis has evidently been satisfactory to shippers throughout C. F. A. territory, as otherwise there would have been hundreds of complaints filed ere this.

It is true that in Arkansas and Louisiana, for example, there are commodity distance tariff rates on horses and mules along with commodity rates on various other kinds of livestock, but in substantially all instances the horse and mule rates are greatly in excess of those applicable on cattle and calves. In Arkansas, for example, prior to the general reductions the difference in excess of the cattle rate ranged from one-half cent for short hauls up to three cents for a haul across the state.

At Memphis the stockyards are located about a mile and a half from the general yards of the carriers, this by reason of the objectional features of locating stockyards within close proximity to the residential district. That necessitates an additional switch haul through the terminals in the transporting of the horse and mule traffic which does not occur on general lines of merchandise.

On a car of horses and mules based on 23,000 pounds minimum weight and a rate of 67 cents per 100 pounds now in effect from Fort Worth to St. Louis, the carriers receive a [fol. 452] total freight charge of $154.10, or 21.8 cents per car-mile. Contrast this with a haul on clean rice to St. Louis from Fort Worth of $1.145 per 100 pounds, or a total freight charge of $458.00 per car, on which we receive a car-mile revenue of 65 cents, or with a car of agricultural implements moving from St. Louis to Fort Worth at a rate of $1.08 per 100 pounds on which we receive a total freight charge of $259.20, or a car-mile revenue of 36 cents, or with a car of soap moving from St. Louis to Fort Worth at a rate of 88 cents per 100 pounds, or a total freight charge of $316.80, or a car-mile revenue of 45 cents. Take the rate of 57.5 cents on horses and mules from Beaumont to St. Louis, or a total freight charge of $132.25 based on a minimum weight of 23,000 pounds, and a car-mile revenue of 17.7 cents based on short line mileage of 748 miles, and compare it with the movement of clean rice to St. Louis, a dead commodity, on which we receive $208.00 per car, or with the movement of agricultural implements from St. Louis to Beaumont on which we receive $241.20, or with a car of soap on which we receive $284.40.

It is true that class rates obtain southbound into certain Texas points on horses and mules from the territory of which I have been speaking. This is likewise true of cattle, and taking into consideration the expedited service, the further fact that horses and mules are considered among the more important freight traffic, that every shipment requires close supervision on the part of the operating forces, and that interruption to service by reason of wrecks, washouts or other causes, often beyond the control of the carriers, add expense to the handling of such traffic that does not accrue in the handling of dead freight, and the further fact that it must necessarily be moved in what is known as through [fol. 453] red ball manifest trains, which trains handle not

in excess of 85 per cent of the engine tonnage ratings and during inclement weather often down to 50 per cent of those ratings in order to maintain advertised schedules, we don't consider that class A rating is excessive but on the other hand consider it a very fair and just basis to be employed.

At feeding points it is necessary to switch out the stock, that is, break up the train, and move it to the stock pens, often located in the outskirts of the terminal by reason of the objectional features to the local inhabitants in the maintenance of such pens, where the stock is unloaded by company employees. After the alloted rest period expires it is necessary to re-load the stock, make special movement to the train yard, and switch it into its proper place in the through train for further movement, this being especially true of a single carload lot of horses and mules, or even in carload lots of three or four in number. On cattle, as a general proposition, the train is a solid one and therefore this unnecessary handling at terminals is not in such a marked degree as it is on handling the single shipments of horses and mules.

Contrasting the whole situation with the handling of dead freight, which is moved in full tonnage trains and is placed in proper position in such trains at the initial make-up terminal and is not re-switched at any intermediate terminal to destination unless it is necessary to reduce tonnage, no penalty is assessed by reason of delays. If this class of traffic reaches destination within a period twice as long as the schedule of the manifest or red ball trains it is considered reasonable service.

[fol. 454] As complainants are leaning towards the Shreveport scale, having had several years experience in handling rates in the Southwest and having had more or less to do with the Shreveport scale, I call attention to the following: While I appreciate that the Shreveport scale had in it the unreasonableness per se of the rates, at the same time it is very easy for the Commission to become wedded to a distance tariff scale which it finds in this territory as a precedent. The Shreveport scale was purely and simply a discrimination case, Texas on the one hand with its Railroad Commission in full charge, Louisiana on the other hand with its Railroad Commission in full charge, and Shreveport located substantially on the state line. No matter what was stated as to the reasonableness of the rates, the case was primarily a discriminatory case, and in prescribing a scale

the Commission took what it found in that territory as a measure of the reasonableness of those rates.

Those rates were for the most part jobbers' rates for nearby distances where the carriers had received the benefit of the inbound haul on carload freight and jobbed it out into nearby territory, and while it is true that the Shreveport scale has been added to time and again, and referred to, always by shippers, it is the contention of the carriers that it is too low a scale to be recognized in the measure of the reasonableness of rates generally throughout southwestern territory; I mean with respect to substantially all classes of traffic, and particularly to horses and mules. There was very little stated in that case in connection with the horse and mule traffic.

[fol. 455] To substantiate what I have said with reference to the movement of horse and mule traffic versus other kinds of livestock, I call attention for example, to the cattle receipts for 1921 at the Union Stock Yards, Chicago, cattle 2,793,000, hogs 8,147,000, sheep 4,734,000, horses 33,725; the value of cattle versus horses was 207,000,000 versus 5,000,000. Kansas City Stockyards annual report for 1921, head of cattle received 2,000,000 plus, hogs 2,000,000 plus, horses and mules 30,000 plus.

My Exhibit 25 shows what the carriers earned based on the minimum weights on other classes of traffic in this general territory. The exhibit will speak for itself.

(Exhibit 25, Witness Clark, was duly received in evidence.)

Cross-examination.

By Mr. Pelton:

As to my failure to mention Louisiana when I spoke of St. Louis being a great distributing center and the eastern states and others as being distributing points, during the period of the war there was a considerable movement of horses and mules from St. Louis to Louisiana points but since that time the movement has fallen off considerably and it is not so great now. The movement from St. Louis is principally to the Southeastern points, although I understand there is a big movement now to the central states, and especially Kansas and Virginia. As to whether the St. Louis market practically controls that territory, there was

more or less contention on that point at the hearings in the Hudson Mule case. Atlanta, Georgia, claims she controls it. I have an idea that St. Louis has a look-in on the market. There is very little movement to Texas points, but that is not due to the rates to a great extent; it is due to [fol. 456] the fact that horses and mules are produced in this territory principally to the west hereof, New Mexico and out in that district. I presume you have received some movements, as your statement indicates, from Montana and up that way, which doesn't pass through the St. Louis mule market; I am speaking of St. Louis, not of Kansas City. . .

As stated by me, Missouri is one of the largest horse and mule producing states in the Union. I will grant that to some extent they are high-grade animals, I should judge a much higher grade than those produced in Montana and Wyoming and that western country, western Texas or western Kansas. I don't think there are many mine mules produced in Missouri; there are some sugar mules. No, that high class stock produced in Missouri does not tend to run the valuation up; where I spoke of $4,000.00 per car I took your mine mules and sugar mules, and eliminated the higher grade mules entirely, and took the prices as quoted. As to whether Texas should have a market at least for the class of horses and mules distributed by St. Louis as well as Louisiana and the Southeast, I consider that all territory should have a market; I believe to some extent that you have a market in your territory here. As to why we don't move some of our horses and mules from St. Louis to Texas, it is like moving coal to Newcastle, it is in the wrong direction. The general trend of that horse and mule traffic in the northern territory is to the east and south of us; we have had rates in this territory but you people don't use them, they are paper rates.

As to why St. Louis does not draw on this market, it is because you receive more for your livestock in Louisiana and the Southeast than you do by shipping to St. Louis. As to whether in the last two or three years the Fort [fol. 457] Worth dealers have disposed of any horses and mules in Louisiana or the Southeast to any extent, I know there has been a more or less steady movement from Shreveport to Vicksburg and Natchez. I don't think they are used in Vicksburg or Natchez; they are used in the

Southeast. As to whether the record in this case will show that, I am familiar with the I. C. C. cases where I have heard shippers testify that they are buying mules in Natchez and Vicksburg and shipping them to the Southeast; they were testifying under oath. This was subsequent to the war.

As to the commodities named by me as carrying a higher rate of earnings as compared with horses and mules, and whether that is due to their carrying a very heavy minimum weight, as a matter of fact I have been most fair in that. I have used minimum weights versus average loading. There is not a commodity shown in that exhibit that won't average 20 to 30 per cent more in weight, average loading versus minimum weight. I grant you that the minimum weight on wrought iron, 46,000 pounds, is more than twice the weight of stock. In speaking of cattle moving in trainload lots, and by that I had reference to beef cattle, I don't know that I used the word principally but I will accept that theory; in so far as the St. Louis and Kansas City markets are concerned they do; we handle them in trainload lots in Texas. I understand they are handled in trainload lots through Texas and concentrated on our line; there are very few cattle raisers but what produce 8 to 10 cars, and we consider that a train. We fill it out but if we haven't got the stock we run it empty, we have to.

We don't have any horse and mule business from Memphis to Texas to amount to anything. In speaking of having to stop at Little Rock for feed and water I was dealing with Texas to Memphis northbound traffic. As to [fol. 458] whether we could maintain a schedule from Memphis to Fort Worth or east Texas points that could move a car of horses and mules without the necessity of unloading under the 36-hour law, we can't do it unless we catch a livestock train. We move horses and mules in one to four carlods and a single shipment of one to four carlots would necessarily have to move that short a distance in our dead freight trains, and that necessitates stopping. We have emergency yards at Kansas City when we find it necessary to unload. Our lines are not in a position to participate in the horse and mule traffic from Kansas City or even west of Missouri points to Texas to the same degree that the shorter lines are; we are from

St. Louis. Taking a point in western Missouri, say in either Kansas City or St. Louis territory, we would haul traffic originating on our line through Texarkana to any point in eastern, central, or southern Texas. We have a commodity rate via our lines, I believe, from Kansas City to Fort Worth, but that would not apply on our line from Kansas City territory; I presume we have class A rates.

M. J. DOWLIN was thereupon called as a witness and, having being duly sworn, testified in substance as follows:

Direct examination pro se:

I am Assistant General Freight Agent of the Rock Island Lines at Fort Worth, Texas. In the other case there were some exhibits submitted relating to claims, but there was no segregation as between horses and mules and there was some question as to the relation between the two. I endeavored to gain some data and got this from the various lines that are shown on my exhibits. Exhibit 26 shows the segregation of the horses and mules from other classes of traffic for the M., K. & T. Railway of Texas for [fol. 459] the years 1920 and 1921. Exhibit 27 is the same segregation for the year 1921 on the M., K. & T. Railway, the line north of the Red River. Exhibit 28 shows the same information for the St. Louis-San Francisco Railway for the year 1921. Exhibit 29 contains the same information for the C., B. & Q. Railway for the year 1920. While there are only four roads here, I think they are typical of this general territory, and the segregation will show the claim relation between the different commodities shown on the exhibits.

(Exhibits 26 to 29, witness Dowlin, were duly received in evidence.)

Cross-examination.

By Mr. Pelton:

I obtained these figures from the different railroads named on the exhibits, and I personally do not know about their correctness. I couldn't give any information as to any apparent discrepancies between the figures of the dif-

ferent lines or as between the figures of the same lines for the different years. I have no statistics by which I could compile this myself, but I have every reason to believe it is thoroughly authentic and correct. I didn't get the figures for the Rock Island because the Rock Island people said they didn't have the segregation and couldn't complete it within the time we had on this case, besides which they considered that the cost of making the segregation would be excessive. Unquestionably, the claim feature is a very important matter as bearing upon the rates on horses and mules.

W. B. PLUMB was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination pro se.

I am Chief Clerk in the Traffic Department in the Fort [fol. 460] Worth Office of the Frisco Railroad. Exhibit 30 is self-explanatory and needs no comment. It shows certain figures for the Frisco, Rock Island and Santa Fe System lines. The information for account of the Frisco lines was compiled by our General Auditor in St. Louis. The information from the Rick Island and Santa Fe was furnished me by the Traffic Departments of those lines, and I understand they received their information from their respective Accounting Departments.

(Exhibit 30, witness Plumb, was duly received in evidence.)

Cross-examination.

By Mr. Dowlin:

It is a fact that for the Rock Island I had the original reports for the years 1920 and 1921. These figures were taken by me from the regular annual report made up by the Rock Island and are absolutely authentic.

Cross-examination.

By Mr. Pelton:

As to whether the data for the Rock Island for 1920 and 1921 are the only information that I compiled in this ex-

hibit, I worked the figures into exhibit form; they were furnished me by the lines shown there. As to whether I can explain the big differences in these figures, the Frisco figures and the Rock Island figures do not segregate for the years 1910 and 1911 as to the different species of livestock. I understand those lines did not have their records in such shape that they could furnish that information for those years. As to why the period from 1911 to 1920 was omitted, it was not considered necessary to show all that information here. We considered that to show a comparison 1910 and 1911 versus 1920 and 1921 would give the Commission an accurate idea of the average loading per car. I think a ten-year period is a good period to use for comparative purposes.

[fol. 461] STATEMENT BY MR. SWENSON

Mr. Swenson: Mr. Examiner, you asked the carriers to furnish specific information in regard to the defense which they would make in connection with the rates which exceed the combination of locals. Considered in the abstract, the carriers do not believe that through rates exceeding the aggregate of intermediate rates are defensible, provided the rates to and from the basing points are reasonable rates. Speaking of this particular case the rates on livestock, including horses and mules, from Kansas to Oklahoma points are subnormal and depressed. This same situation is true with reference to specific rates from Kansas City and St. Louis to Louisiana points.

It is our contention that any combination of this character which will produce through rates lower than the scale and group basis proposed in the carriers' brief in Docket No. 12358 as to shipments moved prior to July 1, 1922, or lower than the scale and group basis submitted by the defendants in this hearing as to shipments moving subsequent to July 1, 1922, are unreasonably low and therefore as to shipments in the past it is proper to exceed the aggregate of intermediates.

The carriers are protected on that situation by general fourth section applications filed by F. A. Leland, Agent for the southwestern carriers, as respects rates from Oklahoma, Kansas, and Arkansas, as well as the general defined territories, to Texas destinations. As to the position of the carriers with respect to the fourth section applications set

for hearing, the scale and the group adjustment proposed in this proceeding will eliminate all of the fourth section violations. The carriers do not wish to continue such fourth [fol. 462] section violations. As we said in the last case, the adjustment on horses and mules, taking the southwestern territory as a whole, was in a chaotic condition, and we would rather speak to the proposed adjustment rather than to the old adjustment in so far as fourth section violations are concerned. I think it is safe to say that the fourth section applications will be wiped out when and if this adjustment is adopted or established.

As to whether the carriers have no justification to make at this time for the continuance of fourth section violations, I would say that the Santa Fe would have, and I also think the other Kansas and Oklahoma lines would have, because the other fourth section violations are against the rates at Beaumont, which were established by the Kansas City Southern, and there are other violations at intermediate points to Shreveport, Alexandria, and Lake Charles. It would be our position that, not having fixed those rates and they having been shown to be unreasonably low, the long line should have the right to fix the long line rate. Under the circumstances the carriers will offer no justification for the violations covered by the applications set for hearing at this time.

Examiner Oliver: I believe you have some explanation about the rate structure.

F. A. Swenson, being recalled as a witness, testified further in substance as follows:

From Kansas City and Missouri points to St. Louis, these mileage scales are in effect which were prescribed by this Commission in Dimmitt-Caudle-Smith Livestock Commission Company v. Railroad Company, 47 I. C. C. 287. Between [fol. 463] Kansas points a mileage scale is in effect which we understand was fixed by the Kansas Legislature. Between Kansas points and Kansas City, Mo., specific rates based upon the Kansas State-made mileage rates to Kansas City, Kans., are in effect. Between points in Kansas and Missouri on the one hand and points in Oklahoma on the other, mileage rates which alternate with specific rates

are applied or in effect to or from Kansas City or St. Louis, as the case may be.

This adjustment exists on practically all Kansas City-Oklahoma lines as a system proposition. For instance, the Santa Fe applies a mileage scale between Kansas and Oklahoma, but it does not apply mileage scales from Oklahoma points on its lines to Kansas points on foreign lines, nor from Kansas points on its lines to foreign lines in Oklahoma. In other words, there are no joint mileage scales between points in Kansas and Oklahoma, so far as we are able to determine. That same situation is true with the other Kansas-Oklahoma lines. Mileage rates are also in effect between points in Kansas, Missouri and Arkansas on the one hand and points in Oklahoma on the other, as for instance single line hauls on the Frisco system and on the Missouri Pacific and other shorter roads like the Fort Smith & Western and the Midland Valley.

From points in Kansas, Missouri, Arkansas and Louisiana to Texas points the class A basis is generally in effect. Some exceptions have been made to this rule where specific commodity rates are published from Kansas City, Wichita and St. Louis to Fort Worth, Houston, San Antonio, etc., which are less than the class A basis. There are also some mileage rates from Kansas to points in the Panhandle section of Texas. Rates lower than the class A basis are in effect also from Kansas City and St. Louis to Texarkana, [fol. 464] Shreveport, Lake Charles, Beaumont, etc., over which the Texas carriers have no control.

Between points in Texas and Oklahoma a mileage commodity scale is in effect for single and joint line application, which is based upon the class A rates fixed by the Commission in Docket No. 1016, as increased by General Order 28 and Ex Parte 74 and subsequently reduced 10 per cent effective January 1, 1922. From Texas to Kansas, Missouri, Arkansas, and Louisiana, including Mississippi River crossings, specific rates are carried which have been in effect for many years, the history of which was given in Docket No. 12358. Between Texas points, also between Texas points and the Shreveport group, the so-called Shreveport scale is in effect. This scale was prescribed in Docket No. 8414, 48 I. C. C. 351. Between Louisiana points a mileage scale is also in effect which we understand was prescribed by this Commission in the so-called Natchez case, Docket No. 8845.

Between points in Arkansas we understand that the so-called Arkansas port scale is in effect. Between Oklahoma points single and joint line mileage rates are in effect, which we understand were fixed by the Corporation Commission of Oklahoma. Between New Mexico points mileage rates are in effect which were made with relation to the mileage rates on horses and mules fixed by the Commission in adjacent states. There are no joint mileage rates in New Mexico. Between points in New Mexico and Arizona on the one hand and Texas points on the other, to transcontinental group, rates are carried in Countiss' eastbound Tariff 3 series, westbound Tariff 1 series, subject to the lowest combination of locals, and when such combination of locals [fol. 465] is applied the rates are generally constructed upon the western Texas border points. This statement as to New Mexico and Arizona does not cover the territory north or south of Belen or Albuquerque, or east of Deming and El Paso. This only covers a territory west of El Paso on the S. P. and E. P. & S. W. and west of Albuquerque and Belen on the Santa Fe.

Cross-examination.

By Mr. Pelton:

As to why the Kansas City-Oklahoma factor in the Kansas-Texas combination is unduly depressed, it was caused by the Kansas State Legislature-made rates, which influenced the low rates on horses and mules from Kansas into Oklahoma. There is no reason for my excepting the rates east of Belen, Deming and El Paso; that was overlooked. The rates from eastern New Mexico on the Santa Fe, Rock Island and E. P. & S. W. Lines to Texas are based on the lowest combination of locals on the border point. That applies all over the state of Texas as to horses and mules. In saying there were no joint rates on horses and mules in New Mexico, it is true that the Rock Island and E. P. & S. W. join in a mileage scale of rates, but there are no joint rates between the E. P. & S. W. and the Santa Fe nor between the Rock Island and the Santa Fe. In stating that specific rates have been published from Kansas City and other points in the north to Texas points, Fort Worth, Houston, San Antonio, etc., it is possible that those rates were published as the result of testimony in No.

12358 to remove the fourth section violations disclosed therein, I couldn't say.

Defendants rest.

(Over objection, Exhibit 31, witness Pelton, described as some Oklahoma Supreme Court information, was duly received in evidence.)

[fol. 466] B. D. Pelton, being recalled as a witness, testified further in substance as follows:

Direct examination pro se:

Exhibit 32 is a comparison of rates from points in the western, northwestern and southwestern states to Kansas City compared to the Shreveport scale.

Exhibit 33, which is simply an amendment to my Exhibit 36 in No. 12358, shows receipts of horses and mules by railroads in Fort Worth, Kansas City, Wichita and Oklahoma City, and brings the figures down to the first of July. Using that as an estimate, if the same number is handled for the balance of the year, Kansas City and Wichita have held their own and Oklahoma City has gained a little. Fort Worth has fallen from 13,157 to twice 4,055, which would be 8,110, or approximately 75 per cent, and you will notice that it is the first time in history that Fort Worth has fallen below Wichita. The Fort Worth, Oklahoma, and Wichita figures are taken from the monthly reports of the Stock Yards company at those points. The Kansas City figures were furnished me in typewritten form by Mr. L. S. Tuckett, Secretary of the Kansas City Stockyards Company. Compared to Fort Worth, back in 1918 the ratio for Wichita was 11.8 of the Fort Worth business, while in 1922 they are far ahead of Fort Worth. I think that exhibit clearly demonstrates that Fort Worth dealers and shippers are working under a very material disadvantage, due to a great extent if not wholly to the rate situation.

Exhibit 34 is a schedule of rates we have compiled as our proposal that you requested. In our brief in No. 12358 we proposed 115 per cent of the Shreveport cattle rate [fol. 467] for 500 miles, and for distances beyond 500 miles the rate of progression diminished so that at 500 miles

and over the rates on horses and mules and the beef cattle rates would be the same. Due to the 20 per cent reduction on cattle rates in the Shreveport scale which took effect on February 20, 1922, it is impossible to grade those rates on horses and mules to meet the cattle rate at 200 miles because the cattle rates have been reduced so much more than the horse and mule rates. We therefore could not adhere to that part of the proposition, but we have prepared here a scale, but it can hardly be considered as a composite of any set of rates in there. It is very close to 115 per cent of the Shreveport cattle rate, but due to the 35 per cent and 25 per cent increases, and then the 10 per cent reduction on horses and mules and the 20 per cent reduction on cattle, the latter applying on the rates on cattle 50 cents and over, the scale has been disrupted, and there is no uniformity in it that we could adhere to.

You will note the rate on cattle in Texas Lines Tariff I. C. C. 128, which is the Shreveport scale brought down to date, is 50 cents from 570 up to 700 miles, and there are a great many discrepancies of the same kind that have been brought about by the rule for disposition of fractions under the general increases and reductions. It has torn the schedule all to pieces as to uniformity, so we have had to disregard all of it. In the scale here proposed we start at 11 cents for 10 miles, which is a fraction over 115 per cent of the Shreveport scale on beef cattle, and generally speaking all the way down it does not deviate from that until you get around 500 miles. One reason we started that low was that it was about 138 per cent of the Shreveport scale for the first 50 miles, but at 50 miles we are only half a cent under the present Shreve- [fol. 468] port scale, and it adheres very closely to the Shreveport scale all along. For distances over 750 miles we have extended to 1,500 miles at the rate of progression you will note in the right-hand column, which it adheres very closely to the rate of progression in the original report in 48 I. C. C. 312, and at 1,500 miles the proposed scale meets the beef cattle rate of 77 cents. The rule for application of joint rates shown on the margin also adheres closely to the figures of the Commission in 48 I. C. C. 312.

In connection with that exhibit, Exhibit 35 is a statement showing the rate of progression in various scales

proposed by the carriers in No. 13627, in the Shreveport scale, and as proposed by the carriers in the Hudson Mule case. I haven't shown the rate of progression in the proposed scale; the two exhibits will have to be compared.

(Exhibits 32 to 35, Witness Pelton, were duly received in evidence.)

Cross-examination.

By Mr. Wren:

As to Exhibit 33 I don't know enough about the horse and mule business at Fort Worth to know whether more horses and mules are received during the first six months of the year than in the last six months; I would not undertake to say. I understand the heavy business is in the fall and winter and spring, but I don't know how it is divided between, before, and after the first of January. As to whether I have any way of knowing that the ratio now existing between Wichita and Fort Worth will continue for the next six months, it has been coming that way the last six or seven years, and there is no doubt in my mind that it will continue until this situation has been adjusted.

[fol. 469] Cross-examination.

By Mr. Witcher:

Speaking about the same exhibit, it is true that the receipts at Oklahoma City and Kansas City have come down from year to year just as they have in Fort Worth, but not in anywhere near the same ratio. As to whether this decrease was brought about by something other than a rate standpoint, it is conceded that the horse and mule business has fallen just like everything else in the last two or three years, but we claim it has not fallen off at the other markets in anything like the ratio it has at Fort Worth. While the falling off is no doubt due to economic conditions, if the dealers at these northern markets can hold up their business to the level shown here, operating under the same economic conditions as the Fort Worth dealers have, it is self-evident that the loss of the Fort Worth business is not due to economic conditions but to the unfavorable rate situation. As to the economic con-

ditions at Kansas City and Oklahoma City as compared with Fort Worth, in a general way I can say that there could be no material difference in the economic conditions.

As to whether the rates set out in Exhibit 34 under the heading "Scale of Rates Proposed by Complainant for Application on Horses and Mules in Territory involved in this Complant" is the basis of rates between all points involved in this complaint, that is a little misleading, as that is the present scale of rates on horses and mules in Texas, the Shreveport scale. It was our intention to have this scale apply in the territory covered by the complaint. As to what would apply for a joint line over 600 miles, the rates will be the same as in the Shreveport scale; the Commission made the rates the same at 500 miles. The scale would be applied between Montana and Texas, al-[fol. 470] though the Shreveport scale does not apply on cattle from Montana to Texas that I know of, nor from Montana into Kansas City, Wichita and Oklahoma City, but a scale a great deal lower does. There was a scale prescribed on horses and mules in the Shreveport case, but as to whether it was on the beef cattle basis I don't know what the Commission based it on.

(Thereupon, at 12:30 o'clock P. M., July 22, 1922, the hearing in the above entitled matter was closed.)

[fol. 471] EXHIBIT GG

Before the Interstate Commerce Commission

Investigation & Suspension Docket No. 2389

Rates on Horses and Mules To, From, or Between Southwestern Points

Fort Worth, Texas, May 6, 1925.

Before J. F. Eshelman, Attorney-Examiner.
Met pursuant to notice.

APPEARANCES

(Omitted, being as recited in 102 I. C. C. 87.)

PROCEEDINGS

Exam. Eshelman: The Interstate Commerce Commission has set for hearing at this time and place Investigation and

Suspension Docket No. 2389, Rates on Horses and Mules, to, from, or between Southwestern Points.

J. A. LYNCH was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination (pro se):

I am General Freight Agent of The Texas and Pacific Railway Company, with headquarters at Dallas, Texas. The tariffs under suspension were published after the receipt by the carriers of the Commission's order of November 10, 1924, in Docket No. 12358 et al., 93 I. C. C. 479, covering the matter of horse and mule rates in the Southwest, 1924. The particular rates in question are involved in connection with the order in this proceeding as to prejudice against Fort Worth in favor of Wichita and Kansas City, as shown on the last part of page 7 and the first part of page 8 of the order, wherein they required the carriers to [fol. 472] publish to or from Fort Worth from and to stations on other lines in New Mexico-Texas differential territory, and in the territory described in the appendix to the report, rates which shall not exceed, distance considered, the corresponding interstate rates which they contemporaneously maintain on like traffic from and to the same stations to and from Wichita, Kansas City, St. Joseph, St. Louis, or Oklahoma City.

In an endeavor to comply with that part of the Commission's order, the carriers published the rates shown in Leland's Tariff No. 131, I. C. C. 1735, between El Paso and other points in western Texas and Wichita, St. Louis, Kansas City, etc., and also published the differential scale between the differential territory in western Texas and Fort Worth as per Supplements 9 and 10 to A. C. Fonda's I. C. C. 174, cancelling the rates formerly in effect between the western Texas points and the interstate points of St. Louis, Kansas City, and Oklahoma City as published in the other tariffs listed in the suspension order.

Since the suspension has come to my attention, I find upon investigation that the carriers have not complied with the Commission's order, although they made an attempt to do so. There are discrepancies in the tariffs and the

carriers expect to make a further check and revision of the rates so they will come within the provisions of the order.

The carriers do not interpret the Commission's order in Docket No. 12358 and related cases to mean that under the rates prescribed therein they are not allowed a differential for their haul in the higher rated territory commonly known as Texas differential territory, or to or from New Mexico points, but only that the differential applied be the same from all territory. This is in accordance with the Commis-
[fol. 473] sion's statement on page 494 of the decision referred to.

In establishing the rates in Leland's I. C. C. 1735, the carriers added to the rates made by the use of the mileage from origin to destination under the scale prescribed in Docket No. 12358 the class A differentials shown in Southwestern Lines Tariff 1-0, F. A. Leland's I. C. C. 1551, to the rates in differential territory covered by this tariff, and the 35-cent differential to and from El Paso and points in the El Paso group. The Texas carriers are of the opinion that improper differentials have been used and are now proposing to apply the Texas class A differentials in Fonda's I. C. C. 174 for application on traffic to, from, and between Texas differential territory.

Exhibit 1 is a County map of the State of Texas, and there has been outlined thereon the boundaries of Texas common-point territory, beginning with the year 1895, as per the fourth annual report of the Railroad Commission of Texas. The 1895 boundary is the green line to the right of the map. The red line is the Texas common-point boundary as per F. A. Leland's I. C. C. 1357, and is the same as that adopted by this Commission in the Shreveport case, 41 I. C. C. 83. The blue line is the Texas common-point boundary extension made by this Commission in the last decision in the Shreveport case, 48 I. C. C. 312. The two light green lines to the left, one on the Texas & Pacific west of the red line to Midland and the other on the crossing of the red line over the I. & G. N. south of San Antonio, is certain additional common-point territory in some tariffs I read as published by the Railroad Commission of Texas.

This map also shows the population by counties, the written-in figures in each county representing the population per square mile therein. This is to show that the dif-
[fol. 474] ferential territory is sparsely settled and that

there is very little traffic in that territory as compared with other parts of the Southwest.

Exhibit 2 sets out on page 1 the present through rates from St. Louis to representative points in Texas on the Texas & Pacific Railway in differential territory, the suspended rate, the service in miles west of the Texas common-point boundary, the amount of the class A differential over the common-point rate from St. Louis, the Texas class A mileage differential published in Fonda's I. C. C. 174 to and from Shreveport and other Texas points, the amount of the through rate to the points named made by adding the said Shreveport-Texas class A differential for the service in the higher rated territory to the scale prescribed in Docket No. 12358 for the distance from origin to destination. You will note that the carriers' proposal materially reduces the suspended rates, and in a great many cases reduces the present rates.

On page 2 is shown the situation from Kansas City, Mo., and on page 3 from Wichita, Kans.

Exhibit 3 is designed to show the northbound situation. It shows the present rates on horses and mules, carloads, from representative points in Texas on the Texas and Pacific Railway in differential territory to St. Louis and Kansas City, Mo., and to Wichita, Kans., the suspended rates and the amount of the through rates to points named, being made up by adding said Shreveport-Texas class A mileage differential for the service in the higher rated territory to the scale prescribed in Docket No. 12358 for the distance from origin to destination.

On page 1 are shown the figures to St. Louis, on page 2 to Kansas City, and on page 3 to Wichita. In this case also the northbound rates proposed by the carriers will be lower [fol. 475] than the suspended rates shown in Agent Leland's I. C. C. 1735. The class differentials referred to in these two exhibits are the Texas class A differentials prescribed in Docket No. 8418, with the General Order 28 and Ex Parte 74 increases and the general reduction of July 1, 1922, applied thereto; they are the differentials being used to-day in Texas on general lines of commodity rates, but not on horses and mules at present.

The Texas lines feel that a differential should be added on horses and mules for the teritory west of what is known as Texas common-point territory for the reason that that is

a more sparsely settled country and there is relatively little tonnage originating at or destined to those points, because of the light density, and for the reason that light tonnage increases the unit cost of operation, and therefore a scale that is proper in the higher density territory east of the common-point line is too low for application west thereof.

Exhibit 4 was prepared to show that many other commodities have a substantial differential when moving to or from these points on both state and interstate traffic. These differentials are taken from the mileage scales and applied in connection with the mileage scales prescribed by this Commission in Docket No. 8418, 48 I. C. C. 312, and in connection with the other rates applicable in Texas, in accordance with the Railroad Commission of Texas rates.

In connection with the traffic to and from St. Louis, Kansas City, New Orleans, Memphis, Wichita and other interstate destinations, the differentials are usually materially higher than the mileage differentials shown in Agent Fonda's I. C. C. 174. That is one of the reasons why the differential on horses and mules from El Paso to St. Louis or from St. Louis to El Paso was 35 cents. It was made by using the differential to or from St. Louis, whereas we pro- [fol. 476] pose in this case to use the differentials applicable to or from Shreveport. Exhibit 4 shows that a number of other commodities in Texas of less value than horses and mules are subject to a higher differential than we are proposing on horses and mules.

This territory has also been regarded as higher rated territory and with a higher cost of operation, and the Commission has approved the differentials applying to and from this territory in a number of cases, particularly Docket No. 8418. That territory is entitled to differentials the same to-day as it was at any other time in the past. In fact, in view of the drouth which has existed in the territory between El Paso and Pecos, Texas, for a number of years, and the scarcity of cattle and livestock, it has decreased rather than increased the tonnage of the carriers. Further, the operation of the steamship routes through the Panama Canal has reduced the tonnage by the railroads to and from the Pacific coast, which was in the past of benefit to these carriers operating east and west of El Paso in the way of affording them overhead tonnage traffic.

To illustrate the situation, I call attention to the fact that the gross ton miles per mile of road on the first division of the Texas & Pacific east of El Paso in the year 1917, during which time there was no boat line operating through the Panama Canal, the westbound ton-miles was 1,200,000 per mile of line and the eastbound was 1,080,000. In 1923 the westbound gross ton miles per mile of line on that division was 770,000, and the eastbound 770,000. It shows that relatively there is less tonnage moving over the line through this differential territory to-day than there was seven years ago. This substantiates the statement that the [fol. 477] conditions to-day warrant as much or greater differentials than existed in the past. The records further show that in 1921 the tonnage through the Panama Canal westbound was 1,026,664.5 and eastbound 1,035,834, or a total of 2,062,498.5, while in 1924 the westbound tonnage was 2,540,633 and the eastbound 10,018,316, or a total of 12,558,949. This shows that a great deal of the traffic to and from the Pacific coast which the carriers formerly handled over their rails through western Texas, New Mexico, and Arizona is now moving by boat through the Panama Canal.

Exhibit 5 is a statement showing total population, population per square mile, and area in square miles in counties traversed by the Texas & Pacific Railway from Texarkana to El Paso via Marshall and also Sherman, Texas. The common-point territory is shown above the line and in practically every case the population in 1920 was an increase over the year 1910, while the reverse is true in the counties shown below the line, which are located in differential territory.

Exhibit 6 is a statement of the tonnage received at and forwarded from Texas & Pacific stations during the year 1917 as reported by the Auditor. This statement has been divided by divisions. The first column to the left designates the different divisions, and the note in connection with the names of the divisions indicates the territory involved. The common-point territory includes the Eastern Division as far as Fort Worth, and on 265 miles the percentage of the 1917 received and forwarded tonnage on this Eastern Division was 44.4 per cent, whereas in the differential territory, which is in the last block of page 1, it consisted of about 9.7 per cent of the tonnage, although

the differential territory covered a distance of 347 miles. This exhibit clearly indicates the relative tonnage or [fol. 478] density of the different portions of the lines. The El Paso traffic is 6.1 per cent, and the Morita to Alfalfa traffic of 3.6 per cent must be added thereto to get the differential territory tonnage of 9.7 per cent. This statement includes only traffic originating at or destined to these stations.

By reference to the map it will be seen that the common-point boundary crosses the Texas & Pacific at Big Spring, Texas, while the Rio Grande Division starts at Baird, Texas. Hence, the Rio Grande Division includes the line of the T. & P. from Baird to El Paso, a distance of 474 miles, of which 127.5 miles, the distance from Baird to Big Spring, is in common-point territory, and the 347 miles west of Big Spring is in differential territory. Exhibit 6 shows that the single station of El Paso produces almost three-fourths of the tonnage in the differential territory, the 347 miles between El Paso and the common point producing only 3.6 per cent.

Exhibit 7 is a statement of the loaded cars received and forwarded at T. & P. stations during the years 1918 and 1919 as reported by the station agents, and shows practically the same situation as Exhibit 6, it having been compiled in the same manner, using a different basis as to the separation between the tonnage. It also does not include the overhead traffic.

Exhibit 8 is a statement of the less-than-carload traffic received and forwarded at T. & P. stations in Texas during the years 1918 and 1919 as reported by the station agents. Here the situation is even more striking than in the two previous exhibits, and shows that only 4.4 per cent of the total tonnage received and forwarded during the year 1919 is to and from points in differential territory.

Exhibit 9 is a statement of the loaded cars received and forwarded from stations on the Texas & Pacific in Texas during the year 1922 as reported by the station agents. A comparison of Exhibit 9 with the previous exhibits cover-[fol. 479] ing the years 1917, 1918, and 1919 discloses that there has been very little improvement, if any.

Exhibit 10 is a statement of less-than-carload tonnage received at and forwarded from stations on the Texas &

Pacific in Texas during the year 1922 as reported by the station agents, being similar to the preceding statement.

Attention is called to the slight difference in the description of the territory contained in Exhibits 9, 10, and 11 (to be offered) in that, due to a change in operation of the railroad from a transportation standpoint, there has been a slight change in the description of the territory involved, but as concerns the territory west of Big Spring, the differential territory, it is the same in Exhibits 9, 10, and 11, as in the preceding exhibits.

Exhibit 11 is a statement of the tonnage received at and forwarded from these stations during the months of April and October, 1922, as reported by the Auditor. To my mind, these statements all clearly indicate the great difference in the density of traffic to and from the territory west of the common-point line as compared with the traffic to and from the territory east thereof, and demonstrates the difference which necessitates the operation of higher rates in that territory than east thereof.

It is a well established fact that the claim payments on livestock are high. That is practically the only tonnage which originates at and is destined to points in the differential territory on the Texas and Pacific Railway. During the year 1923 the T. & P. claim payments on livestock amounted to $52,985.04, the number of cars of livestock handled being 15,002, making the average payment $3.53 per car. The claim payments on all other freight were [fol. 480] $237,726.08, the cars handled were 357,184, which makes an average claim payment on all other freight of 67 cents per car.

In connection with the movement of livestock the carloading is comparatively light, approximately 11 or 12 tons constituting a carload of that freight. I don't believe that horses would weigh in any car different from the 11 or 12 tons loading; they usually load about the minimum; that is a 36 foot car, the lightest car that runs up there is 11½ tons. As to shipments of horses and mules, during the year 1924 we handled 1,018 cars and the average tons per car was 11.8; the average loading of other carloads of freight handled by the Texas & Pacific during the year 1923 was 27.57 tons per car. That was based on the movement of several hundred thousand cars, though I haven't the exact figures right now.

Livestock, including horses and mules, require the carriers to furnish different facilities from ordinary freight, such as loading facilities, stock pens, etc., which can not be used for handling ordinary freight traffic, such as freight depots; further, other carload traffic is usually unloaded without the carriers furnishing anything but the track to place the car on, whereas on livestock we have to furnish the pens and chutes to load and unload the animals. Also, a considerable amount of carload tonnage is loaded and unloaded on tracks owned and supported by the industry itself.

Livestock in this differential territory is in a territory where on the line of the Texas & Pacific—as a matter of fact, western Texas would include all the lines in that territory—the altitude is considerably higher than east of the common-point boundary. Taking the Texas & Pacific, it begins on the east bank of the Mississippi opposite New Orleans, practically at sea level, and steadily climbs until [fo.. 481] it reaches an altitude of 4,530 feet approximately at Van Horn, Texas, about half way between Big Spring and El Paso. From this high point the grade goes down to El Paso, which is somewhat less. Eastbound from El Paso you have to climb up hill, and you are going up and down hill all the way to Big Spring. Fort Worth, for instance, has an altitude of approximately 600 or 700 feet, showing the great difference between common-point or high density territory and the grades and altitude in differential territory.

The territory between Big Spring and El Paso is what is considered as semi-arid; there being a considerable amount of deep sand in that territory on which there is little possibility of cultivation of farm products. There are points in the territory where there is a difference in the situation; for instance, around the Pecos River, a very small area near Pecos, there is considerable irrigation, which produces some traffic. The same condition is true for a short distance east of El Paso, where there is considerable production by irrigation, the water being secured for the farmers east of El Paso, I understand, from the Elephant Butte Dam built by the government some distance north of El Paso on the Rio Grande River; this water is transported down the river to these different points, but as the ground rises eastbound from El Paso the irrigation from the Elephant Butte Dam does not extend a very great distance.

Until the seasons change and that territory secures a steady amount of moisture each year, there is no possibility, as far as we know, of commercial development other than the possibility of some livestock being raised. At one time there were several prospective ore mines in the vicinity of Van Horn, and during the last ten years, over seven or [fol. 482] eight years ago, there was a small production of ore that moved into El Paso. So far as our records show, however, this has ceased, and there is no development of that country; apparently the mines did not produce the ore in sufficient quantities to pay the cost.

As a comparison, I call attention to the high altitude of 4,530 feet in relation to the altitude of the B. & O. Railroad, which operates through West Virginia and into Washington, the highest point on the B. & O. east of Parkersburg, W. Va., being 2,540 feet at Terra Alta. Our altitude in western Texas is approximately double that in eastern territory; I don't know what the grades are on the B. & O., but I believe we have stiffer grades in our territory. We have 1¼ per cent ruling grades throughout that territory. They are long grades which are expensive, that is, it is necessary to expend a considerable amount of power to get over the grade for any distance. We haven't the amount of curvature that some of the other lines have in that territory; they go around. Still, there are considerable curves. As to whether the grades are compensated for curvature, that is the net ruling grade, with the possible exception of just west of Baird there was a grade which is being reduced; that is in common-point territory. The amount of traffic east of Big Spring has developed sufficiently to permit us to set aside enough money that has been earned to cut down some of the grades, but owing to the very long grades on the western part of the line the expense is too great to reduce them. In fact, with an elevation of 4,500 feet to overcome, the only possible way I know of would be to tunnel, and that would require a pretty long tunnel. The elevation of Denver is 5,000 feet, the general opinion throughout the United States being that it is one mile high.

[fol. 483] Further, in accordance with reports we filed in line with section 15 on our records our rate of return is approximately 3½ per cent; that is for the year 1924, and for the other years it is relatively the same, maybe a little

different. This rate of return is similar to the group return for the southwestern lines, and as a matter of fact, in the big livestock case, Docket No. 15386, the rate of return for the Texas lines for 1923 was 3.56, based upon the annual reports which those lines have made to the Railroad Commission of Texas. This 3.56 per cent is a greater rate of return than for any year since 1913 with the exception of 1917, when the rate of return was 5.19. The average for the years 1913 to 1923, inclusive, was 2.22 per cent. That includes not only the differential lines but the common-point lines as well.

To illustrate the difference in the tonnage on the line immediately east of El Paso and that on the eastern section of the line, the gross ton-miles per mile of line on the first division east of El Paso amounted to 1,311,000 plus tons, whereas on the division immediately east of Fort Worth the tonnage was 4,200,000 plus, eastbound and westbound. The Texas & Pacific might be taken as a funnel, the eastern section being the large end of the funnel and El Paso, or the western section, being the small end. There is a great amount of tonnage on the eastern section and it gradually runs out as you go west due, of course, to the development of the country, climatic conditions, such as the territory not being subject to farming, and with no other compensating production there.

The exhibits identified by me are true and correct to the best of my knowledge and belief; they were prepared under my direction and I have been careful to recheck them.

(Exhibits 1 to 11, Witness Lynch, were duly received in evidence.)

[fol. 484] Exam. Eshelman: Mr. Lynch, perhaps I should call your attention to what I neglected to state at the opening of the hearing. You may remember that the Commission's announcement of March 12, 1925, in Docket No. 17000, Rate Structure Investigation, contained this language: "The provisions of the resolution are now a part of the law which the Commission administers, and are therefore to be applied in every case which might fall within the terms of the resolution or be affected thereby, whether adversely or beneficially."

The Examiners have been instructed to call this matter to the attention of the parties at the opening of hearings,

and they have instructed us to receive any evidence pertinent or relevant to the issues under the resolution; I take it that that means pertinent or relevant to the issues of this case, as affected by the resolution. I call that to your attention so you may have an opportunity to present any evidence, if you have not already done so, that you might wish to present.

Cross-examination.

By Mr. Tanner:

I have no figures as to what the population per mile of line would be in differential territory. The line of the Fort Worth & Denver City north of Amarillo shown in Exhibit 1 was included in the territory covered in Docket No. 12358, and no differentials were prescribed in that territory. Your understanding is correct that the carriers propose to apply to and from so-called Texas differential territory where mileage rates based on the decision in No. 12358 plus the class A mileage differential rates prescribed in the Shreveport order. We feel that is proper from the fact that No. 12358 prescribed a mileage scale no higher than in 9702 Class D rates, which are applicable in a low-rated territory, [fol. 485] primarily based on conditions obtaining east of the Kansas City Southern, which has always been held down by various conditions. The carriers have always considered that a much lower-rated territory than west of the Kansas City Southern, even in eastern Texas or Oklahoma. The Commission has apparently established that scale, extended out somewhat, in prescribing these rates on horses and mules. In his proposed report the Examiner used class C, I believe; the Commission used the class C. The traffic density and other things in western Texas certainly warrant a considerably higher rate there than would apply in Louisiana or Arkansas.

It is true that in its report the Commission states that no one seriously questions the class A rates were too high. That had reference, as I understand it, to the basic rate and not in connection with the differential. I think the difference in the cost of operation, the density of traffic, and so forth, fully warrant a scale using the class A differential; as a matter of fact, I think the class A differential scale was a little bit too low. As to whether the carriers asked the

Commission to prescribe class B rates in No. 12358 and consolidated cases, that was generally the understanding between Fort Worth and Oklahoma, Kansas, Missouri—the territory which I understand was principally involved.

There is a relation of the rates on classes and commodities generally to and from the so-called El Paso group more to New Mexico rates than to the Texas rates, due to that complaint of the Corporation Commission of New Mexico, but still they all bear a relation to the same rates in western Texas. Certainly, there is a difference in the rates; you [fol. 486] can not make a general statement when you take account of the operation of some of the railroads through New Mexico and other railroads through Texas, you have to put in rates that will co-ordinate with both schemes. As to whether the rates to intermediate points in New Mexico from the territory here involved are now on a lower basis than the rates we propose, and as to whether the rates we here propose are reasonable my investigation of New Mexico indicates that the lines have not begun the necessary action to comply with the Commission's order and put in a realignment of the rates, or even through rates to points east of the Texas-New Mexico line that are higher than the rates to points west of the line.

As to the significance of my testimony concerning the elevation of points on our line as compared to points on the B. & O., that is only to show the altitudes which it is necessary for these southwestern lines to go over in order to reach the other side of the mountains; they must go over these elevations, and elevations cause grades, and grades necessarily increase the cost of operation. I am not an operating man.

As to whether the gross ton miles to which I testified included pass-over traffic to and from transcontinental territory, the gross ton miles given in my testimony include all the traffic, Exhibits 6 to 11 covering the tonnage originating at or destined to points in that territory, but the gross ton miles include not only the weight of the freight but also the weight of the cars, and I believe the locomotives as well as company materials and work trains. Relatively, it is used only in a comparative sense to show or indicate the difference in the western section of the line in differential territory and the line in common-point territory.

As to my saying there is a decreased livestock tonnage and we want to add differentials on that account, I stated

[fol. 487] that the drouth situation on our lines in differential territory had resulted in a decrease in the livestock industry there, and there is less tonnage now than there was years ago. As a matter of fact, we know our livestock tonnage is not comparable with what it was several years ago, because of various reasons:

First, pretty near the entire line west of Fort Worth was devoted to the livestock industry, but in later years it has been broken up into farms. As far out as Big Spring, and there is usually a good production and considerable tonnage of cotton and other freight in that territory, but west of Big Spring it begins to run out. There are certain places where some farming is done, but that is a semi-arid territory and the farming is not near what it is east of Big Spring. Further, as I understand it, the soil is different. There is what is known as deep sand territory out there that you can not grow very much on and the lack of water prevents the other. We are experiencing a great movement of the remaining stock from that territory owing to the drouth situation. As to whether we want to add additional burdens on those commodities by the addition of differentials or by increased rates in the face of that drouth situation, I don't believe this addition on the horses and mules would affect those people to any extent, inasmuch as the horses and mules are ordinary draft animals that go to the industries and are not used to any great extent in the range territory; horses are used on the ranges, of course, but they are not in the same proportion as the other improvements. It is true that they use horses and mules in the agricultural section in the vicinity of El Paso, or where they produce cotton on our line in differential territory but there is not a bad situation [fol. 488] in that connection. Those people in the El Paso cotton districts are prospering from all the information I have, the reports being that they are in good condition financially; they are not suffering from the same conditions that these rangemen around Van Horn and Metz and west of the Pecos River and east of the irrigation district are suffering.

I understand there have been bank failures in New Mexico and El Paso caused by the cattle situation, such as the drouth and the declining market of cattle during the years 1920 and 1921, and from overstocking and overborrowing by a number of the cattlemen. That is a totally different situation. I understand from the government reports that

the horses and mules in Texas are now in a flourishing condition and have advanced in price with very good market prospects for the next five years.

It is true that the financial condition of the Texas & Pacific is now on a sounder basis than it has been for quite a period, due to the fact that we are handling, comparatively speaking, less livestock and more of other classes of freight, and due to the fact that this western country has been turned into farming rather than a stock raising country. I know, and stated in my direct testimony, that there is farming a short distance east of El Paso under irrigation. As to how far north that goes into New Mexico, I could not say. I could not say whether the water comes from the Elephant Butte Dam into El Paso for a distance of 135 miles; I imagine it is about 100 miles.

The testimony given by me as to claim payments on livestock includes all livestock. There is no separation according to our records between the different species of animals. We class them in our claim records a great deal in accordance with the Commission's classification, but it indicates [fol. 489] cates that the livestock is a more hazardous class of traffic, including horses and mules, with a greater liability, than ordinary dead freight.

As to whether there is any movement from St. Louis to Stanton, Midland or Monahans, where I show in Exhibit 2 that our proposed rates would cause reductions, I have not checked up the movement. It has been so short a time since the suspension that we have not been able to go into the details and get such information. As to whether those rates show on their face a violation of the fourth section, they show a departure from the fourth section. I don't think there is a violation, as my investigation indicates those tariffs are covered by Leland's application filed in 1911.

With reference to Exhibit 5, I said that practically all the counties in differential territory, or the bigger portion of them, have suffered decreases in population. By that I mean the greater portion of the line. El Paso shows an increase; in 1910, El Paso County included the territory now in Culberson and Hudspeth Counties. As to whether my testimony regarding the movement of traffic through the Panama Canal was limited in its effect to differential

territory, that tonnage which moved through the Panama Canal more seriously affected differential territory than any other part of the line. Increased local tonnage at other points of the line has compensated or taken up the loss of a good deal of the intermediate traffic. I don't say that the Panama Canal is the sole factor in the decrease of tonnage through differential territory, but that is a material factor, as I know we are not handling to-day a great deal of the Pacific Coast traffic which we handled in prior years. I don't think that is because such traffic now moves over other [fol. 490] lines instead of the Texas & Pacific on account of the active solicitation by the other lines. I think our solicitors are just as active as any of the others and that we secure our share of the moving tonnage, possibly a little more.

Cross-examination.

By Mr. Pelton:

The present rates shown on Exhibits 2 and 3 are specific not only to El Paso but to the other points as well. I think it is true that those applications for relief from fourth section departures referred to by me were denied by the Commission's order in No. 12358, and I think the effort of the carriers in publishing these rates was to do away with those fourth-section departures. I am not familiar with the level of rates on horses and mules in New Mexico and Arizona, and interstate points between those states, but I think other witnesses will cover that at the Topeka hearing. I do know that in 81 I. C. C. 155 the Commission prescribed higher rates on livestock in Arizona and New Mexico.

It is my understanding that the rates on horses and mules from New Mexico and Arizona points to Fort Worth are based on the combination, but the carriers are to publish rates as a result of Docket No. 12358. As to the differential of 23 cents on shipments from Fort Worth to Roaring Springs on the Motley County Road 79 miles from Quanah, which is 189 miles from Fort Worth, the mileage rate for the total distance being 44 cents, making the through rate 67 cents from Roaring Springs to North Fort Worth for a distance of 286 miles, whereas the rate to Texline under the 12358 scale would be 53.5 cents and the local rate from Quanah to Roaring Springs would be 24 cents, I will say

we are not attempting to justify that 23-cent differential for a distance of 79 miles, but we do feel that the standard [fol. 491] class A differential of 8 cents for 79 miles would be proper. I have tried to explain that the specific differentials are those shown in Agent Leland's Tariff 1, I. C. C. 1551 and we are proposing to substitute in lieu thereof the mileage differential in Fonda's Tariff 2 Series, they being the mileage differentials prescribed by the Interstate Commerce Commission in the Shreveport-Texas case.

It may be that the Motley County Road is allowed special differentials because of its poor financial condition and great lack of traffic, or it may be that there should be a special differential for that line as well as for other lines similarly situated. I supposed that the Orient would be here to testify as to their situation where they are allowed special differentials. It is my idea that these short weak lines are entitled to special differentials. It is necessary that they have that in addition to the standard differentials; that has been found proper by both the Interstate Commerce Commission and the Railroad Commission of Texas. The Jefferson & Northwestern, near the Louisiana border in Texas, has been allowed special differentials. I have heard it stated that the Q., A. & P. has recently been absorbed by the Frisco, but whether that is true or not I don't know.

As to whether my Exhibit 5 shows about the same decreases from the five counties in common-point territory and the six in differential territory, I can not see any comparison between the two. For instance, the first county in differential territory had a decrease of 21.6 per cent, and the greatest decrease was in the last county. The first county east of differential territory was 16 per cent. As to whether I made any computation to show the actual increase or decrease of population in differential territory as a whole, the only computation I have made in connection with this is shown on the exhibit. As to whether the actual number of inhabitants is more controlling or convincing [fol. 492] than the percentages shown, I think the percentages are right and indicate the difference. It is simply a comparative statement. There is a condition which comes to my mind that I overlooked. This statement shows a decrease in Parker, Callahan, Nolan and Mitchell Counties, but in these and adjacent counties there has been a consid-

erable development of oil resulting in increased tonnage in that territory, and if we could discover an oil field out west of Pecos that would produce relatively the same amount of tonnage it would help that territory. It is true that there was some oil development around Pecos a few years ago, but I don't think there was a lot of people who came in there temporarily and then drifted away. I have stated that since 1920 there has been at least one very serious drouth and there was a great number of people who left the country west of Pecos, I think; they started to move out about 1917. It is not true that in that territory out there conditions have been reversed and a great number of settlers are coming in again; the drouth still exists west of Pecos. As to whether there is a drouth in West Texas now we have explained that the cattle moving out of that territory during the present Spring due to drouth conditions are in much worse physical condition than in 1917, which indicates that the drouth has been on in that territory for some time. There may have been some rains within the last two weeks, but I don't think it is material west of Pecos.

Taking Exhibits 6, 7 and 8, covering the year 1917, there has of course been a change of conditions since then throughout the country, due to the fact that 1917 was a war period. There has been a steady improvement in this part of the country in the last few years, but out in that territory they don't seem to improve so much. I have seen [fol. 493] newspaper reports about a contemplated irrigation project in the Pecos Valley, but as I understand it there has been no action by the United States Government which indicates the prospect of very extensive irrigation for several years to come. As to whether Exhibits 6, 7 and 8 truly represent present conditions, the conditions are better in the eastern section and worse on the western section with the exception of the irrigation district around El Paso. I think they are representative, taking the different years; they extend over a period from 1917, 1918, 1919 and 1922 and the situation is relatively the same throughout those years.

As to whether the Texas & Pacific and all other lines similarly situated with respect to this area of the country depend on long-haul transcontinental traffic principally, we depend on every ounce of freight we can get. As explained in

my direct testimony, my experience is that the transcontinental traffic is being depleted by reason of the movement through the Panama Canal, and that has affected us materially. My investigation develops that all the transcontinental lines are suffering from this decrease in transcontinental traffic, not only these southern lines through the El Paso gateway but up to the Great Northern and Northern Pacific they are suffering similarly. I understand that is one of the reasons that materially affected the necessity for the recent receivership of the Chicago, Milwaukee & St. Paul.

The tonnage on the Transcontinental Division shown in Exhibit 11 between Argo and Hodge is on the branch that runs through Sherman and Paris to Texarkana. As to that being almost identical between Clyde and Big Spring, the tonnage on that line is almost exclusively local traffic. [fol. 494] There is a different situation. If the Transcontinental Division of our line were differently situated we would endeavor to secure higher rates, but it is controlled by competition of other carriers. The rates are set by higher density lines, such as the M., K. & T., which operates through Denison and Sherman, and the Frisco and Santa Fe through Paris. As to the 91 miles between Paris and Texarkana, there is considerable cross-country competition with Paris and with the Frisco railroad just north of the Red River.

As to what the altitude has to do with the transportation, if the grades on either or both sides are normal, it indicates that that is a mountainous country out there in differential territory, and we have to go up and down hill more than in the flat country to the east. For illustration, for practically 200 miles from New Orleans we have pretty nearly flat country and can haul pretty near as many cars as you can put on a locomotive. The tonnage for a certain D-10 locomotive in that territory is 4,000 tons, but when we get out in this higher altitude country we can handle only about 1,050 to 1,200 tons with the same class locomotive; where we can handle that much with one engine, 4,000 tons, it shows how much cheaper it must be to operate in the flat country than up and down hill in the mountain country. As to whether the lack of tonnage makes any difference, we operate more trains in the eastern section where all that tonnage is; if we could put 4,000 tons on a train between El Paso and Toyah,

the junction point, that would reduce the number of trains. As to whether the transportation conditions are just as difficult in the Brazos River country and where the Baird Grade is as in differential territory, the Baird Grade is a short, steep grade but it is being reduced; it is one of [fol. 495] those places where the grade can be reduced by a moderate amount of cut work but that can not be done very well where you go up a hill 40 or 50 or 70 miles.

As to whether my testimony that the earnings of all the roads in Texas were 3.56 per cent and the Texas & Pacific earnings were 3.5 per cent indicates that the Texas & Pacific is holding its own, even though there is no differential on horses and mules, it indicates that we are not receiving proper earnings on our property. If the Texas & Pacific were entirely in diffierential territory, there would of course be a different showing, but they have a considerable amount of line in common-point territory.

As to whether the Southern Pacific, the Texas & Pacific and a part of the Panhandle & Santa Fe are the only three major lines in differential territory in Texas, I understand that the Rock Island and the I. & G. N. are major lines. As to whether Exhibit 1 is at variance with the tariffs, according to this map, the common-point line from St. Louis, Kansas City and Wichita, interstate, is the red line. The blue line is the Commission's finding in Docket No. 8418, 48 I. C. C. 312. That would take that part of the Santa Fe between Farwell and Amarillo out of differential territory, but so far as interstate traffic from St. Louis, Wichita and Kansas City to Farwell is concerned, that is outside of common-point territory. I would rather that that be testified to by a Santa Fe man; they will put something in at Topeka.

Recross-examination.

By Mr. Tanner:

As to the small branch or feeder lines in Texas, whether they are in differential or common-point territory, if they now get the benefit of a special differential, we want that continued and in addition we want a differential based on the actual mileage traversed in differential territory, the same on horses and mules as applied generally on commodi- [fol. 496] ties. Taking a shipment from St. Louis to a point on the Pecos Valley Southern for illustration, there should

be a standard differential plus the special differential which the Texas Commission has found proper to accord to the Pecos Valley Southern in order to keep it in operation.

I have no figures nor any knowledge of the cost of maintaining our line in so-called differential territory as against portions thereof in certain territory in Louisiana where the cost of floods and the like is encountered, but our experience is that floods occur also in the western part just as they occur in Louisiana. In 1921, I think it was, the floods in Texas were just about as bad as they were in Louisiana. As a matter of fact, we had more railroad washed out in Texas than in Louisiana for that year, although the Mississippi River was higher according to the records. As to whether that is a general proposition, we have never had any material damage in Louisiana since that time, and have not had any material damage in Texas; by that I mean the entire line in Texas. I know that one time out west of Big Spring in differential territory we had to dig a ditch several thousand feet in order to drain a lake that had formed on our line so that the railroad could be put in operation. It was under water about 10 feet deep for a considerable distance in consequence of the extraordinary rains we had.

Cross-examination.

By Mr. Bazan:

I am one of the committee representing all lines in this case. As to why the carriers are proposing class A distance scale differentials in preference to class B or 5th Class, they felt that the class A differential would properly indicate the difference in transportation conditions. As to [fol. 497] how they arrived at the class A basis, they looked at the scales and believe that is the proper differential. In No. 12358 they proposed a scale similar to class B and lower than class A. It is the proposal of the carriers to apply the class A Shreveport scale differential in addition to the total through mileage rate, the differential to apply to only that part of the haul beyond common-point territory, such application to be uniform from all origin points and to all destination points on traffic to and from that territory. As to whether the carriers intend to make any exception on traffic destined for export to Old Mexico, I don't know; I don't believe it has ever come up. Normally rates are car-

ried from points in Kansas and Missouri, St. Louis, to these Rio Grande crossings for exportation to Mexico that are different from the local rates to those crossings; sometimes the rates to El Paso are made in competition with the rates through Brownsville and Laredo, and the rates to Brownsville and Laredo are also made with reference to the rates which would apply to Gulf ports in connection with steamer lines, and to New York.

With reference to my testimony about the effect of the traffic through the Panama Canal on the revenues of our line, I have made no calculations as to what percentage the traffic on our line would be increased if we should receive all or a certain part of the traffic now moving through the Canal. As to the special services and special terminal facilities provided on livestock about which I testified, there would be no substantial difference between the services we would render and the facilities we would provide in differential versus common-point territory, except that there is relatively more of the livestock tonnage in differential [fol. 498] territory. And then there is the distinction that it is harder to furnish water and other things for livestock in differential territory than in common-point territory, as the water is not as easily available in the former as in the latter. As to whether that difference is great enough to justify the differentials, that is only one of the features; you have to consider the density of traffic and all other features. I can not testify as to the services in New Mexico or Arizona, but I believe our line is representative of the Southern Pacific, as they are parallel. There is a somewhat different situation on the Orient Railroad, as they do not have so much of this overhead traffic as we have.

I know there was a decision in Docket No. 13001, Chamber of Commerce of Kansas City versus A. & W. R. R., but I did not go into that case and do not know just what territory is covered.

Examination.

By Exam. Eshelman:

As to the fourth-section departures that are said to have shown up in Exhibit 2, the rates from St. Louis to all stations east of Pecos are higher than the rates to the stations from Pecos to El Paso under the present and old scale.

Under the suspended scale those departures were ironed out and they will also be ironed out if the Commission approves our proposal shown in the last column on page 1. I don't know whether those fourth-section departures were covered by the applications which were tried in this particular case.

[fol. 499] W. C. BEAMAN was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination.

By Mr. Thompson:

I am Assistant Traffic Manager of the Texas-Mexican Railway, with headquarters at Laredo, Texas. For the past year I have been making a special study of livestock rates and the cost of its transportation. This study has convinced me that from a net revenue standpoint the Texas-Mexican Railway would be in a better position for it to retire from the livestock traffic at the present rates.

The line of the Texas-Mexican, with the exception of the station of Corpus Christi, is all within what is known as Texas differential territory as defined in the Shreveport case. Its traffic density is very low; in the year 1924, the best year in its history, its traffic density amounted to 371,808 tons one mile per mile of line; or very little more than half the average for the State as a whole. The average tons one mile per mile of road for all freight for the years 1919, 1920 and 1921 were 166,944, or less than half the traffic of 1924. The increase of traffic in 1924 over the average for the years 1919 to 1921 and years prior thereto was due to the development of the Mirando oil field, discovered in 1922.

Of our total traffic in 1924, 44.13 per cent was crude oil, 18.62 per cent was stone, sand and gravel; 60.75 per cent of the total tonnage consisted of crude oil, stone, sand and gravel. The uncertainty as to the life of an oil field, and the certainty that should production in volume continue a pipe line will transport the bulk of the oil, justi-
[fol. 500] fies discounting the operating results of the Texas-Mexican for the years 1922 to 1924 in determining the right to a differential basis of rates.

The necessity for roads to the oil field, coupled with liberal state and federal aid in the construction of through highways, has stimulated the building of roads in our section, with the resultant heavy movement of road building material. A great part of this material is going into the construction of Highway 12-A, which parallels our line from Laredo to Corpus Christi. When this highway is completed we face the loss of the road building material, and in addition a substantial portion of our local traffic, both freight and passenger, to bus and truck line, which are now using the completed portions of the highway and whose activity will increase with its completion. These facts should all have consideration in reaching a decision as to the comparative level of rates to be allowed the Texas-Mexican for the future.

The population and tonnage available and in prospect in the triangle formed by the I. & G. N. from San Antonio to Laredo, the Texas-Mexican from Laredo to Alice, and the San Antonio & Aransas Pass from Alice to San Antonio was thoroughly gone into by the Commission in Finance Docket No. 2874, Proposed Extension of Line by the San Antonio & Southern, No. 2915, Construction of Line of San Antonio & Mexican, and No. 2951, Proposed Construction by Nueces Valley, Rio Grande & Gulf Railroad Company, all decided in September, 1924. Those cases are covered by mimeographed reports and are so recent that a repetition of the evidence given therein would serve no good purpose here. They are conclusive as to light traffic density, sparsity of population, and unfavor-
[fol. 501] able prospects for development in that section.

In Docket 2951 the Commission stated that the principal development for the future seemed to be in livestock, and that livestock contributed very little to the support of a railroad. We agree with the Commission, and go a little bit further and say that in our case it contributes nothing to the support of our railroad; in fact, it is a drain on our resources to handle it at the present rates. By that I mean that in my opinion the cost of handling the traffic is in excess of the revenue return we get out of it. The bulk of the livestock handled by the Texas-Mexican originates or terminates on the line between Laredo and Alice. This piece of line, 118 miles in length, has 3,542 degrees

of curvature, or the equivalent of one complete circle each 12 miles.

Light traffic density increases the cost per unit of freight handled. Besides this handicap there is a further handicap in the movement of livestock that is imposed by quarantine regulations, both state and federal. The entire line of the Texas-Mexican is in quarantine territory for Texas fever tick. This makes it necessary that sand for bedding cars be secured from a designated pit in Hebbronville, Texas, which is kept fenced and inaccessible to travel, as required by the quarantine regulation. The sand from the Hebbronville pit must be transported to other stations or the stock cars brought to Hebbronville for bedding.

Experience has shown that it is more economical to bring the cars to Hebbronville for bedding, which increases the empty car miles made by livestock cars. In 1923, for each loaded mile made by stock cars on the Texas-Mexican an empty stock car was moved 1.295 miles. In the case of [fol. 502] box cars, only .547 empty miles were charged to each loaded mile. A check of the wheel reports of all our trains moved over the Texas-Mexican in the year 1924 shows that for each ton of livestock 4.86 tons of equipment were required. Dead freight required only 1.56 tons of equipment per ton of freight.

Livestock results in light train loading. In the year 1918 livestock counted for 10.65 per cent of our total traffic. The average revenue tons per train in that year amounted to 169.43, with 9.41 loaded cars per train mile. In 1921 livestock made up 1.51 per cent of the total traffic. The revenue freight per train mile was 198.81 tons, with an average of 9.44 loaded cars per train mile. In 1924, 2.35 per cent of our traffic was livestock. The revenue freight amounted to 255.34 tons, with 10.54 loaded cars per train mile. The increased train loading in 1924 was brought about in part by the movement of traffic that loads heavily per car, like gravel, and also by the comparatively few cars of livestock contained in the train.

We believe that the class A differential now carried in Item 1005 of Fonda's Tariff I. C. C. 174, added to the mileage scale rates prescribed by the Commission for application in common-point territory, will result in reasonable rates for application in differential territory on the Texas-Mexican. The Commission recognized the need for

higher rates in differential territory when it set the 1716 scale. At 23 I. C. C. 660 the following statement is made:

"As stated in the original opinion, these mileage scales are not prescribed as ideally correct but rather to fit the situation before us. The livestock rates prescribed are for transportation of livestock to Fort Worth, Oklahoma City [fol. 503] and Wichita. Whenever a distance of over five hundred or six hundred miles from these sections is obtained, the greater distances run into territory in which traffic is extremely light and where the general level of railroad rates is properly high. This is not so in every instance, but it is upon the whole. While ordinarily we might not project the same increase per mile for distances of one thousand miles which was employed for a distance of six hundred miles, it was felt that under the circumstances of this case it ought to be done."

The policy of higher rates for differential territory should be followed in this case by allowing differentials as proposed by the carriers. In stating that the addition of class A differentials to the rates prescribed by the Commission would make reasonable rates for application on our line, I mean reasonable minimum rates. In my opinion, it is not high enough to correctly reflect the proportion that should be borne by the livestock traffic, but after thorough investigation the Commission set these rates for application in common-point territory and I think the minimum that the differential lines should be required to take would be this scale plus the class A differential.

Our differential situation has changed since December 20, 1923, as a result of the finding in Rio Grande Valley Chamber of Commerce v. St. Louis, Brownsville & Mexico Ry. Co., 83 I. C. C. 706. Prior to December 20, 1923, we had a scale of differentials that applied to all points on our line with the exception of Corpus Christi, applicable to interstate traffic, which were the same as the differentials used by the G., H. & S. A. at Eagle Pass, for instance. [fol. 504] As a result of the Commission's decision in the Brownsville case, lower rates to points on the St. Louis, Brownsville & Mexico, Robstown and south, were ordered than we had in effect to Laredo. Laredo and Brownsville are in active competition for traffic to Mexico. The Laredo lines feel that it would retard the develop-

ment of the Laredo section should they continue rates to Laredo on a higher basis than that prescribed by the Commission to Brownsville. For that reason we voluntarily reduced the interstate differentials applicable to Laredo and points on the Texas-Mexican and points on the I. & G. N. south of Devine to the basis found reasonable in the Brownsville case to the Valley.

The testimony in that case showed that the Valley compared very favorably both as to population and operating conditions with points in Texas common-point territory. While our line is not very far from the Valley, the territory served is entirely different from that in the Valley, in that there is no means of irrigation at points on our line other than at Laredo. The Texas-Mexican has a length of 161 miles and it does not cross a running stream. The country is rough and broken and that portion of it west of Alice is not adapted to agriculture. In speaking of the Valley I have reference to what is known as the Lower Rio Grande Valley in the neighborhood of Brownsville, as served by the St. Louis, Brownsville & Mexico Railway.

These differentials now applicable to Laredo on interstate traffic we feel are less than reasonable maxima; they were put in solely to meet the competition for Mexican trade. On the east end of our line from Alice to Corpus Christi, a distance of 42 miles, the differentials are on the same basis as that set by the St. Louis, B. & M. at Robstown. It is necessary to meet this reduction in differential there in order to meet cross country competition.

[fol. 505] As to whether it is worth while to say anything of the additional expense of handling livestock brought about my reason of changes in the tick eradication law, that is an expense which can not be met from the rate itself. It should be stated as a separate item, in my opinion, and we now have on foot a move that will state that charge as a separate and distinct freight rate, something that has developed since March 28th, and we don't think it has a proper place in the line haul rates.

Cross-examination.

By Mr. Tanner:

In stating that I thought the so-called Shreveport differentials published in Item 1005 of Fonda's Tariff 2-I to be reasonable minimum arbitraries to be added to the com-

mon-point rates, I am of the same opinion as witness Lynch that the scale prescribed in Docket No. 12358 should be extended on through differential territory and to that scale should be added the class A differential published in Fonda's Tariff 2-I.

Cross-examination.

By Mr. Bazan:

Unfortunately, we do not have special differentials for the Texas-Mexican on livestock. We are asking for the class A differential for the differential haul on our line, but not for any special differential in addition to that.

We want the rate determined by the rate-making route, by which I mean, as an example, that from Kansas City to Hebbronville the rate-making distance would be via S. A. & A. P., Alice, and the Texas-Mexican, which is the short distance. The shipment will enter differential territory at Skidmore on the S. A. & A. P., 43 miles north of Alice, and move 57 miles in differential territory on our line, or 100 miles in differential territory. We want the differential for 100 miles added to that scale for the dis- [fol. 506] tance from Kansas City to Hebbronville. Now, if the shipment moves to Aguilares, a station 30 miles west of Hebbronville, the rate basing distance will be via Austin, I. & G. N., Laredo, and Texas-Mexican, and the shipment will enter differential territory at Devine on the I. & G. N., moving 120 miles in differential territory there, plus 31 miles on our line, making a total of 151 miles. We want the differential for all of the haul in differential territory via the rate-basing route.

I said that for the year 1919 livestock constituted 10.65 per cent of our total traffic, and that for the year 1924 it was 2.35 per cent of the total traffic. The amount of livestock handled in 1924 slightly exceeds that handled in 1919, I believe, but the volume of dead freight increased to a larger extent in 1924 over 1919. The horse and mule movement on our line in 1924 constituted a very small percentage of the livestock movement.

Cross-examination.

By Mr. Pelton:

The Texas-Mexican has been in operation since 1881, I believe. As to whether we ever had a differential on horses

and mules, we had a differential interstate under the 1716 scale, as explained by the Commission in the quotation that I read, and we have had a differential under the rates in Tariff 7 series, not stated as a differential, but the rates graded up more sharply after we reached the differential line than they did in common-point territory, broken up into smaller groups. Those are specific rates. It is not stated as a specific differential, but I think some consideration was given to the traffic conditions in our territory when those rates were fixed as group rates. Southbound and in some instances northbound the class A rate is applicable from points on our line, especially so on Oklahoma traffic. That class A rate is the Texas common-point rate [fol. 507] plus the interstate differential. The Oklahoma-Texas scale runs out at 450 miles and does not reach our line, and from there on, regardless of common-point or differential territory, class A applies.

Certainly, under these group rates we have a differential, the class A rates to Texas common points plus a differential of 13 cents from stations Springfield to Laredo, inclusive, and 5.5 cents from stations Alice to Clarkwood, inclusive, over the group 10 rates in Tariff 26, and under that tariff the group 10 rates might be termed the common-point basis of rates. Taken as a whole, I believe the application of the class A differentials we now propose, when added to the 12358 scale, will mean a decided decrease of our differentials on interstate traffic, which, as I have explained, are depressed. For instance, from St. Louis, Kansas City, and other defined territory the present class A differential to stations from Springfield to Laredo, inclusive, is 13 cents added to the common-point rate. Under the proposed class A differential it will range from 9 to 15.5 cents, involving both increases and reductions. The differential from Clarkwood to Alice of 5.5 cents will be reduced, the differentials ranging from 2 to 5 cents. As to the northbound rates, I understand the rates ordered by the Commission, plus the differential, will be a reduction under our present rates at practically all points on our line.

I say that the differentials should be added for the distance in differential territory via the route used in determining the rate, regardless of the movement; I believe we should have fourth section relief to that extent. I think the shipper is entitled to figure the rate via the cheapest

route, provided he uses a reasonable number of lines. I [fol. 508] don't think we should allow him the use of ten lines to get from Kansas City to Alice, for instance, as some of them do. If the I. & G. N. had a shipment for delivery to us they more than likely would take it to Laredo. Even though that involves a greater haul in differential territory, it does not necessarily mean a greater rate. If that shipment was destined to a point east of Aguilares, the rate-making route would be through Alice, with fourth section relief permitting the I. & G. N. to meet that Alice route rate through Laredo.

So far as fourth section relief is concerned, speaking from the Texas-Mexican standpoint, we don't care whether we get it or not; if there is any way we can get out of the livestock business we would like to get out. We are getting out of a part of it and letting them drive to other lines because of the losses we have sustained from the livestock traffic. Just the last month there has been car after car going to our competitor, and we are glad of it. Should the Commission prescribe the basis via the short line mileage, a reasonably short line, I do not think there should be any occasion for fourth section relief. My personal opinion is that the carriers, if they are all in the same shape as the Texas-Mexican, ought not to want fourth section relief on cattle. Let them move by the shortest possible route, provided that is the most economical route. We are not soliciting any livestock traffic, but we are so situated that we have to handle it. As to whether we have very much, there were 2,819 cars last year of cattle, horses and mules, hogs and sheep, and goats. A very small portion of them were horses and mules, 26 cars to be exact, including inbound and outbound.

[fol. 509] Redirect examination (pro se):

While the Texas-Mexican has been in operation since and prior to 1922, a large part of our traffic has been livestock. For the year ended December 31, 1923, our total corporate deficit amounted to $2,541,359.87. Our funded debt which was matured and unpaid amounted to $2,340,000.00, and interest matured and unpaid amounted to $3,225,000.00. Those are the operating results obtained by the Texas-Mexican during nearly half a century of operation, when its chief traffic was livestock. We have been able to reduce

the deficit slightly in the last two years due to earnings from traffic other than livestock.

Recross-examination.

By Mr. Bazan:

I did not state that the rates published in Leland's 7 series tariff from stations on our line to Kansas City are made by stated amounts over the common-point rates; I said they were published as group rates, but that they grade up sharply after reaching differential territory. I take it that there is no common-point group under Leland's Tariff 7; it has smaller groups than the common-point group, the common-point group is divided up into groups itself. The tariff will speak for itself as to how the rates are built up and where the breaks occur. I have not checked it within the last couple of years, but do not now recall just how they are.

(Whereupon, at 2:40 o'clock P. M., May 6, 1925, the hearing of the above entitled matter was adjourned until May 15, 1925, at Topeka, Kansas.)

[fol. 510] Topeka, Kansas, May 15, 1925.

Before J. F. Eshelman, Examiner.
Met pursuant to adjournment.

APPEARANCES

(Omitted, being as recited in 102 I. C. C. 87.)

PROCEEDINGS

Examiner Eshelman: It seems to be the general opinion of everyone here that it will take at least two days to finish the testimony in No. 12358, and it is agreeable to everyone here that the further proceedings in this I. & S. case may be continued at Kansas City, Missouri, on Tuesday, May 19, 1925, at the Chamber of Commerce rooms at that place, and it will be so ordered.

(Whereupon, at 10:05 o'clock A. M., May 15, 1925, an adjournment was taken in the above entitled case to Kansas City, Missouri, on May 19, 1925, as aforesaid.)

Kansas City, Missouri, May 19, 1925.

Before J. F. Eshelman, Examiner.
Met pursuant to adjournment.

APPEARANCES

(Omitted, being as recited in 102 I. C. C. 87.)

PROCEEDINGS

Examiner Eshelman: We are met pursuant to adjournment to further hear I. & S. Docket No. 2389, Rates on Horses and Mules to, from and between Southwestern Points.

W. L. HAMILTON was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

[fol. 511] Direct examination.

By Mr. Thompson:

I am Chief of the Commerce Bureau of the Southern Pacific Company, Pacific System, residence, El Paso, Texas. Before offering my exhibits I want it thoroughly understood that I am not here attempting to justify the rates proposed in the suspended tariffs, and I want to explain the failure of the Southern Pacific Company to carry out the Commision's decision in Docket No. 12358 in a reasonably intelligent manner.

The Southern Pacific Company, Pacific System, did not participate with other carriers in the defense of Docket No. 12358. There is no movement of horses and mules from points on our line in Texas or New Mexico to or from Fort Worth for the good and sufficient reason that no horses and mules other than range horses and cow ponies are raised or marketed in the territory we serve in New Mexico, and the route between El Paso and Forth Worth over our line

is so long as to preclude the possibility of a movement our way as against the shorter direct Texas lines running east from El Paso. In times past and under the stress of competition, the old El Paso & Southwestern (now the Southern Pacific) and the Rock Island lines published via Tucumcari, New Mexico, and El Reno, Okla., a good many of the short-line Texas intrastate rates from El Paso to eastern Texas points, including some livestock rates. The rates are, however, and always have been paper rates, since our haul to Fort Worth, for example, is 905 miles as against 614 miles via the Texas short line between the same points. No sane livestock shipper would move livestock over the route I have mentioned.

[fol. 512] When we received the decision in Docket No. 12358 we decided to go out of the El Paso-Fort Worth business on livestock cancelling the intrastate rates we had made to apply via Tucumcari, and in order to comply with the technical requirements of the Commission's decision to publish from and to New Mexico stations east of El Paso the same rates to Fort Worth that were carried to Wichita, Kansas. Such instructions were given our Traffic Department, but the matter was miserably handled and about all we actually accomplished was nothing. Our intentions were lawful and proper, and we gave due consideration to the order but failed only because the law of averages, where the human element is involved, asserted itself.

I now want to explain the peculiar situation of our line east of El Paso with reference to what is known as Texas differential territory. With the exception of 20 miles of line between El Paso, Texas, and Newman, New Mexico, we do not operate in Texas differential territory and rates between El Paso and the East are not made with reference to Texas rates, either in differential territory or common-point, but with regard to rates in New Mexico and east thereof. This adjustment is the result of the decision in Corporation Commission of New Mexico v. Railway Company, 34 I. C. C. 292, decided June 14, 1915.

I do not want to be understood as proposing rates to eastern New Mexico or through New Mexico to El Paso based on any differential over Texas common-point territory, but I do say that the general level of rates there should be as high as or higher than the rate level in Texas

differential territory, because there are no conditions in New Mexico, operating, traffic, density of population, or [fol. 513] otherwise, that would justify lower rates in New Mexico than in Texas differential territory. To the contrary, there are conditions that justify higher rates in New Mexico than in Texas differential territory. For instance, the population of Texas differential territory, including the counties through which the differential territory line runs, is 6.47 persons to the square mile. If you include one-half of the area and one-half of the population in the counties through which the differential territory line runs, the population per square mile is 5.59, and if you take only the counties in differential territory west of those through which the differential territory line runs, the population per square mile is 4.58, whereas the population in the whole State of New Mexico is only 2.94. In speaking of differential territory line I referred to the line that separates common-point territoy and differential territory, the line described in the 2 Series Tariff. One of my exhibits will give the population of the counties in New Mexico served by the Southern Pacific Company. A further interesting comparison between New Mexico and Texas, including differential territory in Texas, is that the population per square mile in Texas, as a whole, is 17.77 as against 2.94 in New Mexico.

The Commission has recognized in many cases the higher rate levels existing in Texas differential territory, New Mexico and Arizona than that existing in the territory covered by the decision in Docket No. 12358 and the justification for it. This particular point was discussed in American National Livestock Assn. v. Southern Pacific Co., 26 I. C. C. 37, decided Jan. 7, 1913, and affirmed in 32 I. C. C. 438, and the Commission thereafter prescribed a scale between Arizona and California 130 per cent of the Oklahoma scale on livestock. In Arizona Packing Company v. [fol. 514] Arizona Eastern Railroad Co., 81 I. C. C. 115, decided June 27, 1923, the same point was again considered and the principle confirmed, but due to changed conditions and alterations of spread of rates as a result of the difference percentages of general increases between southwestern territory and the territory west of El Paso and Albuquerque the Commission prescribed a scale of rates for application between Texas differential territory, New Mexico and

Arizona equal to 120 per cent of the southwestern territory basis.

It is pertinent to note that in both of the foregoing cases complainants contended for adoption of what is known as the 1716 scale for the territory west. The last case wherein the Commission recognized by decision the higher rate levels of Kansas City and St. Louis to eastern New Mexico and El Paso as compared with the rate levels between the same points in Missouri and Texas common-point territory is Certain-Teed Products Corp. v. Railroad Co., 95 I. C. C. 273, decided January 12, 1925. This decision does not use a percentage basis, but took the difference between the class rates appearing between the two territories to determine the difference in the rate levels.

For the reasons I have given, I am of the opinion that the scale prescribed in Docket No. 12358 is too low for application to El Paso through New Mexico or to points in eastern New Mexico. All of our present livestock rates in this territory and west thereof are in my opinion too low and are not now bearing their proper measure of the transportation burden, and we feel that a minimum of 120 per cent of the scale prescribed in No. 12358 is the very lowest that can be justified for application to El Paso through New Mexico or to points in eastern New Mexico, and the Southern [fol. 515] Pacific Company will attempt to put its New Mexico interstate rates on that basis as soon as we can lawfully do so.

On the question of movement I want to reiterate again that there is none involved to or from Fort Worth via our line, and for that matter there is only a small movement from and to other points. What little there is is from Kansas and Oklahoma to El Paso and points west, so we have little revenue to lose directly, but as a matter of principle and for the clarification of the rate situation as a whole we want to see these more or less paper rates put on a proper basis so they will not afford a theoretical basis for some contingency fee rate expert to attack other rates. I will say further that the present adjustment is bad and that the Southern Pacific Company welcomes the assistance of the Commission to the end that its irregularities may be ironed out.

Exhibit 12 is a statement showing the receipts of horses and mules at the various markets in the Southwest for the years 1922 and 1923. The authority for the figures is the

United States Department of Agriculture's Year Book, 1923. This is interesting to the end that it shows a small movement from different sources to El Paso on horses and mules. It further shows only a small increase of 1923 over 1922 at El Paso, whereas at the markets where there is a market for horses and mules a great increase of 1923 over 1922 will be noted. Taking all of the horses and mules received at El Paso, it would only make 244 cars for 1922 and 270 for 1923, based on an average loading of 25 head per car. In addition to that, a great many of these shipments must be range horses and cow ponies moving with cattle under cattle rates.

[fol. 516] Exhibit 13 is a statement showing the population as of 1920 and the area in square miles, also the population per square mile, of counties in New Mexico through which the Southern Pacific Company, Pacific System, operates, compared with the population area in square miles and population per square mile in representative counties in Texas located in common-point territory. In speaking of the Southern Pacific Company I include the El Paso & Southwestern, which is now a part of the Southern Pacific system. In referring on this exhibit to counties east of El Paso, that would be restricted to counties through which the old E. P. & S. W. runs with the exception of Dona Ana, Luna and Grant, and El Paso, Texas, which I have shown. Those counties are shown for the reason that rates to Deming, New Mexico, are indirectly involved.

By way of explanation that important counties have not been picked out to the advantage of any point, I have taken in this exhibit the heart of Texas common-point territory, which you will find described in many cases to be Waco, Texas. I have started in Tarrant County, Fort Worth, and gone directly south. My counties are therefore representative and my showing would have been exceeded had I taken counties in northern or eastern Texas. I did not follow the Texas differential territory as set forth in the decision in No. 12358, as these figures were prepared for me prior to that decision.

The purpose of Exhibit 14 is that it is hard for anyone not familiar with the State of New Mexico to realize the light density of traffic therein, so we show here in graphic form just what light density of traffic means. You will note [fol. 517] that our expenses in all counties exceed enormously our receipts from the business conducted therein.

In some cases the taxes are twice as much as all receipts. This exhibit includes counties west of the counties included in this case, but as a whole is conclusive as to the density of traffic within New Mexico. It includes all counties in New Mexico through which we operate; Hidalgo, Grant, Luna, Dona Ana, or west clear across the southern part of New Mexico; it follows our line north from El Paso to Quay County.

The purpose of Exhibit 15 is to refute a statement I have recently heard that the Arizona Packing Company case, which I have cited, between markets 120 per cent of the southwestern territory basis for application in Texas differential territory, New Mexico and Arizona; that is true as to the lower or shorter mileages. This scale started at the state line with the distance to Cactus, Ariz., the home of the Arizona Packing Company, and gradually increased until at 625 miles you will notice the Commission allowed the carriers exactly 120 per cent of the southwestern territory basis. At 700 miles you will find they allowed 126 per cent, at 800 miles 127 per cent, and at all distances above exceeded, even at 1,000 miles, 124 per cent. It is pertinent in connection with this exhibit to note what the rates to El Paso or eastern New Mexico involved in this proceeding would be for distances of 625 miles or more.

Exhibit 16 is self-explanatory and is presented simply to show what the result would be under the Docket 12358 scale plus 20 per cent as compared with present rates.

Exhibit 17 is the same as Exhibit 16, using Kansas City as the destination. The information is presented for the same purpose. You will note on this exhibit that we ran [fol. 518] onto one of the matters that need ironing out in the El Paso-Kansas City rate, the northbound rate being higher than the rate southbound.

Exhibit 18 is the same as Exhibit 17, but uses Wichita, Kansas, as the destination. Here we again find some discrepancy in the rates in different directions, El Paso to Wichita and Wichita to El Paso that need ironing out.

Exhibit 19 is the same as the three former exhibits with St. Louis used as the destination. Here again we have different rates in different directions between El Paso and St. Louis.

Exhibit 20 is a statement showing present rates on horses and mules per standard car between Deming, New Mexico, and Oklahoma City, and St. Louis as compared with the

rates for equal distances prescribed in Docket No. 12358, also what the rate would be if this scale were increased 20 per cent. You will note as to rates applying over the Santa Fe and Southern Pacific in connection with the Rock Island that we have an extremely bad situation that needs correction, and we are willing to have it corrected. For the purpose of this exhibit I have used short-line mileages in all cases. This exhibit shows the result that would accrue from our proposal in the matter of giving each of the markets its natural advantage as to location. The Fort Worth market would have a lower rate than any of those shown but, as heretofore stated, we can not be interested in the Fort Worth market, and even though our rates will be of a paper character we still want them on a proper basis.

On the line of the Southern Pacific system in Texas extending north from El Paso, there is a station of Fort Bliss and a station of Material Yard. They are not factors in a case of this character as the movement to Fort Bliss would be on government contracts and the rates might be anything we might choose to make them. However, we [fol. 519] want the adjustment we are advocating to apply to those stations in principle, although it would not apply in fact except under some very unusual circumstance. The exhibits I have offered are true and correct to the best of my knowledge and belief; they were prepared under my jurisdiction.

(Exhibits 12 to 20, witness Hamilton, were duly received in evidence.)

Cross-examination.

By Mr. Bazan:

As to whether I am proposing 128 percent of the 12358 scale on the horse and mule markets shown in Exhibit 12, we are proposing not less than 120 percent of that scale. We possibly might be able to justify more than 120 percent. As to what I think would be a maximum percentage, we have always contended that we are entitled in that territory to 130 percent of the southwestern basis, which I think would be a proper maximum basis. This 120 percent or higher basis should be applied at any point on the

Southern Pacific Company in New Mexico, as well as to El Paso; in fact, all the way to the Pacific Coast terminals in California. As to whether it should be applied east of El Paso I do not represent the G., H. & S. A. in this proceeding.

Cross-examination.

By Mr. Tanner:

To the best of my knowledge and belief the statement I made that there is no movement of horses and mules from New Mexico or El Paso to Fort Worth is true so far as affecting these rates. There might be a movement of horses, but they would not move on horse and mule rates. In making that statement I have not made and examination of the records, but I have been there for twenty years and in that whole time I recall very few movements of [fol. 520] horses and mules from New Mexico to Fort Worth that would be affected by this rate. If there is any movement from New Mexico or El Paso over our line to any point in common-point territory, it would only be incidental; there may be exceptions to my statement that there is no movement.

We are not proposing a different rate from the northern markets to points in New Mexico and to El Paso from those proposed by the other respondents from those northern markets to El Paso and differential territory. The situation affecting Texas differential territory does not particularly interest us. We are not here defending any basis different from that which they are defending, and the burden of the defense is on them. We are simply showing that to El Paso through New Mexico and to points in New Mexico we are entitled to a level of rates as great as or greater than that applying to and through Texas differential territory, and I have attempted to show that the Commission has recognized that principle. Should the Commission find that no differential should be added to the rates from the northern markets to Texas differential territory, we would still contend that we are entitled to a minimum of 120 per cent of any scale which might be prescribed for southwestern territory or Texas common-point territory.

As to whether we want rates made applicable to points in New Mexico that are a minimum of 120 percent and a maximum of 130 percent over the rates to common-point territory, I do not mean to say it in that term, as our rates are not made with any relation whatsoever to Texas common-point or differential territory and we do not want them so made. We simply want the higher rate level that we are attempting to show here exist in our territory given to us in connection with any case where we may be linked with the territory to which you refer. As to whether we want any higher basis to New Mexico than the carriers [fol. 521] could get to Texas differential territory we want the basis I have stated as a minimum and we want that without reference to Texas differential territory. I would not exactly say that I would do everything in my power to get the New Mexico rates raised if the Commission would raise the rates from northern points into El Paso; I said we would make that attempt regardless of what is the decision of the Commission. We are not going to wait for its decision in that respect. I am speaking of the intrastate rates in New Mexico. The so-called 1716 scale referred to is now applicable on livestock generally between points in the Southwest and east of the line of the Santa Fe extending through Albuquerque to El Paso.

Cross-examination.

By Mr. Pelton:

As to whether I have ever known the Commission in any case to make 130 per cent of these cattle rates a reasonable basis for the horse and mule rates, I cited a case where they gave us 130 per cent of the Oklahoma level. It was known as the American National Livestock Case versus the Atchison, Topeka & Santa Fe Railway and others. That was not the 1716 scale, which does not enter into my discussion. I have tried to make myself clear that it is the difference in the rate levels between the two territories. American National Livestock Association versus the Southern Pacific, 26 I. C. C. 37, and confirmed in a later case. I mentioned another case where the relationship fixed was 120 per cent, the Arizona Packing Company versus the Arizona Eastern Railroad Company and others, 81 I. C. C. 115. I know of no cases where the Commission has set for that

general territory 115 per cent. I do not know whether the Commission considered the question of differential rates in the 1716 case or in I. & S. 958. I selected the 1922 and 1923 figures in my Exhibit 12 because they were the only figures we had available in our files; I assume the 1924 Year Book of the Stock Yards Company is out and you are entirely free to put in the figures. I do not know that 1922 and 1923 were the best horse and mule years since the war nor that the horse and mule business has fallen off right at 50 per cent in 1924 under 1923.

[fol. 522] The cow ponies I spoke of moving in shipments of cattle on the lower cattle rates are for the purpose of taking care of the cattle on the range, practically all of them. There might be a movement of these cow ponies with the cattle to market points, but not to a real market point, and what I had reference to is horses and mules moving between range points. While I am not giving that as a fact I am stating it for what it is worth; there is a great movement of cow ponies: It might interest you to know that we handle very few horses and mules on our line; our revenue would not equal $5,000.00 a year and a great deal of that is sow ponies. As to how I selected the New Mexico counties listed in Exhibit 13, I simply followed our line. I do not know how long the two scales in our Tariff 163-E applying on horses and mules, Arizona and New Mexico interstate and New Mexico intrastate, have been in effect. They are lower than the so-called Shreveport scale, and they were voluntarily published and since then maintained for several years by the Southern Pacific, but I now claim that those rates are too tow; absolutely, and so is any other livestock rate on our line. I am not familiar with the conditions of the horse and mule industry at the present time.

Cross-examination.

By Mr. Tedrow:

At the present time the southwestern livestock scale applies on cattle between Texas, Oklahoma and New Mexico and various market points like Fort Worth, Wichita and Oklahoma City, and that would include a shipment of cattle between El Paso and either Fort Worth or Oklahoma City. As to why we could maintain a higher rate basis on horses and mules between El Paso and those points, the mere fact

[fol. 523] that a lower basis is in on cattle does not justify a lower basis. It might interest you to know that my company is earning under the present rates a trifle over 17 cents a car-mile for the handling of livestock. I include El Paso in this territory from which we want to apply the higher rates when the movement is through New Mexico; we could do that to Fort Worth on account of our circuitous mileage as we would not handle any Fort Worth business. We rightfully and in justice to the carriers could apply it so far as St. Louis, Kansas City or Oklahoma City is concerned. I do not say we would be permitted to do it, but we are going to keep on trying until we do it or are stopped from doing it. We could apply such a scale as that and continue to move the business as it will not make an unreasonable rate from El Paso or New Mexico to Wichita, Oklahoma City and Kansas City, although when they get into the Kansas City market they would be up against the same thing that we are at Fort Worth with circuitous mileage.

Assuming that the Commission would approve this scale from Texas and then approve a scale 20 per cent higher from New Mexico, the Commission would have to approve the same scale through New Mexico to El Paso over our line; it could not have two sets of rates on one line. As to whether the scale ought to be 120 per cent of the old scale, regardless of how many miles of the haul is within New Mexico, it is our contention that it should not be less than 120 per cent to any of the markets involved.

As to the showing in Exhibit 14 that the receipts at the local stations within the various counties in New Mexico that we serve are exceeded by the taxes and pay-rolls in those counties, I do not think a similar statement can be made up from each and every railroad in the United States, [fol. 524] excepting counties in which large cities are located. We have no large cities on our line in New Mexico. The terminal for our New Mexico line is El Paso, Texas. Quay County is the New Mexico terminal of our line, and Tucumcari is the junction with the Rock Island. The Quay County freight receipts would not include any livestock shipped from there to the markets unless they were prepaid, and by far the greatest portion of the livestock that moves out of the county to the markets and the freight is paid at the markets when the livestock is sold. There is a

very trifling movement of grain out of Quay County; no grain is grown on our main line in New Mexico. There is no considerable movement of alfalfa on our line from New Mexico, although one or two little stations near El Paso ship some. There is no agriculture on our line. We have no ore originating on the eastern division or that part of the lines involves in this case. We have coal originating on a branch of the Dawson Line, the freight on which is paid at the destinations in Arizona or at the local points on the line where it is consumed.

You can conclude from my statement that on the tonnage originating at these stations, such as livestock, coal and such agricultural products as we have, the freight is paid at destination and that the receipts here shown are only on local merchandise moving into those points on which the freight is collected at destination, with such small amount of freight as might be prepaid, except that all the coal moves from the town of Dawson on the Dawson Branch and would not affect any of these main-line counties. The amount of livestock that originates is practically nil in the past few years. I have all the counties listed that our line serves, but involved in this proceeding are only Quay, Guadaloupe, Torrence, Lincoln and Otero. The payrolls shown [fol. 525] here include all the expenses allocated to that part of the line, including expenses for train crews at the terminal points; Quay County would have the payrolls for the trainmen. I have not allowed in our freight receipts any allocation for through traffic, as the attempt is to show the density of the local traffic only. I do not attempt to say that all this expense is confined strictly to local traffic; that only shows what is spent in the counties. As for the $28,298.00 for taxes on the line in Torrence County, that line is devoted to a much greater extent in hauling through traffic than in handling traffic to and from Torrence County.

Cross-examination.

By Mr. Bazan:

As to whether there would be any violations of the aggregate of Intermediates Clause of the Fourth Section between El Paso and the first station east, should the Commission allow us the requested 120 to 130 per cent basis but fail to prescribe any differentials for Texas differential territory,

I have not figured the contingency and do not expect the Commission to take the action you describe. I am aware that the carriers have already had a witness who proposed certain things in this case; I understand he represented the intrastate routes for Texas lines and proposed a class A differential. We do not concur in that as to rates on our line, as we do not want our rates made with reference to Texas rates. As to whether we wish a different rate from Wichita to El Paso from that of the other lines reaching El Paso, we want a reasonable rate from Wichita to El Paso applied over the route by which we move the traffic. That would be $201.50 per 36-ft. car from Wichita to El Paso, as shown in Exhibit 18, the distance being 871 miles via our line and its connection. As to whether witness [fol. 526] Lynch has proposed a rate of $215.05 for a 36-ft. car from Wichita to El Paso through Texas for a short-line distance of 817 miles and I am here proposing for 54 additional miles a rate of $13.55 per car less, although I contend that we desire or should have higher rates than the rates in Texas, I am proposing not less than 20 per cent of any scale that might be prescribed for the territory to which I refer.

Cross-examination.

By Mr. Dowlin:

As to the questions asked me pertinent to the prepaid freight under the Southern Pacific system of accounting the receipts shown at a station will include freight which was prepaid at some other point as well as the freight on which the charges were collected at destination. As to what that would amount to, I have never checked it; it would be a very small addition to the local receipts.

Redirect examination.

By Mr. Thompson:

In speaking of the route from El Paso to Fort Worth over the Southern Pacific lines being circuitous, I was referring to the route through New Mexico; all of my testimony refers to the route via Tucumcari. The same thing would be true, though, of the intrastate route via the Southern Pacific from El Paso to Fort Worth via San Antonio,

as San Antonio is farther from El Paso than Fort Worth. In saying it ought to [would not?] be reasonable to expect a shipper to move a shipment via such a circuitous route, I was speaking of the route through New Mexico and El Reno, Okla., but the same would be true of the intrastate route of the Southern Pacific from El Paso to Fort Worth. The distance is approximately 625 miles to San Antonio and approximately 614 miles to Fort Worth, via the direct line, and I think it is 200 or 300 miles from San Antonio to Fort Worth; it would be upward of 850 miles or more from El Paso to Fort Worth via San Antonio.

[fol. 527] Recross-examination.

By Mr. Tanner:

On other traffic these same lines apply the short-line rate via the long route from El Paso to Fort Worth and northern Texas points. On dead freight a circuitous haul of 150 per cent is not too great, but for livestock it is impossible; the character of the commodity precludes the movement.

Recross-examination.

By Mr. Bazan:

It is possible that livestock is quite frequently moved over lines having expedited service where the mileage is longer than the direct short-line routes, but I do not think we have ever had a movement of livestock via our line to Fort Worth, although we have had rates in for many years.

B. M. Gillespie was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination.

By Mr. Andrews:

I am Chief Clerk in the General Freight Department of The Atchison, Topeka and Santa Fe Railway Company at Topeka, Kansas. I am familiar with the differential territory involved in this case and with the rates and the decision of the Commission prescribing these mileage rates.

In connection with the rates in the differential territory involved in this proceeding, it is the view of the interested carriers that the rates prescribed in Docket No. 12358 are on too low a basis for application therein. In speaking of differential territory I mean to include New Mexico. Practically all the rates to and from differential territory in Texas are on a higher basis than the rates to Texas common-points. The basis proposed at the hearing in Fort Worth should be made applicable to and from the points in Texas differential territory, as the Commission has found [fol. 528] in the Shreveport cases that the rates in western Texas should be on a higher basis than the rates to the common points. The same practice is followed by the carriers in basing rates from interstate territory to the particular territory involved in this proceeding. In speaking of the rates prescribed by the Commission I had reference to the general basis; as to whether that includes livestock I am not in a position to state.

Exhibit 21 is a map of the Santa Fe system on which we circled with blue pencil and designated as No. 1 the Slayton Division of the Panhandle & Santa Fe line, which is in differential territory. This division will be referred to in the next exhibit.

Exhibit 22 is a statement showing freight traffic density on the Slayton Division branch lines expressed in terms of net ton-miles, revenue and non-revenue ton-miles combined for the year ended December 31, 1924. It will be noted that the miles of road operated are 286.63, total net ton miles 95,211,308, average ton-miles per mile of road 332,175. This division is representative of the traffic density per mile of road operated in Texas differential territory. But assuming for this territory the same relationship of revenue ton-miles to revenue and non-revenue ton-miles combined are found on the Panhandle & Santa Fe during the year 1924 of 88.32 per cent, and applying this to the revenue and non-revenue ton-mile density for the branch lines, it produces an approximate revenue ton-mile density per mile of road of 293.377 tons. The density on the branch lines and for Texas differential territory is exceedingly light when compared with the State of Texas as a whole, for which there is a density of 1,082,456 revenuo tons per mile of road for the year 1924. This statement was pre- [fol. 529] pared by the statistician and not by me. There

is practically no movement of horses and mules on the Panhandle & Santa Fe lines in Texas, the total movement for the year 1924 being 170 cars.

Taking up the situation in New Mexico, through error on the part of the parties checking out and publishing rates involved in Docket No. 12358 the New Mexico situation was lost track of, and we have failed to comply with the Commission's order in so far as the rates to Fort Worth are concerned. This was not caught until just prior to the Commission's I. & S. Docket No. 2389, and in view of this, as the rates which the carriers were proposing to publish were based on adding the Texas differential for the miles traversed in New Mexico and in Texas differential territory to the distance rates prescribed in Docket No. 12358, no rates were published, it being desired to await the Commission's decision in that docket. While rates were published in Leland's I. C. C. 1735 between five New Mexico points and Fort Worth, Oklahoma City, Wichita, St. Louis, Kansas City and St. Joseph, the error lies in the fact that we never cancelled out any rates in individual tariffs and they still stand. It is our purpose now to apply the rates in the 131 tariff, I. C. C. No. 1735 and cancel the individual lines publication; I will introduce an exhibit to show.

Exhibit 23 is a statement showing the short-line distance, the present and proposed rates between representative points in New Mexico and Fort Worth, Oklahoma City, Wichita, Kansas City, St. Joseph and St. Louis on horses and mules per 46-ft. car. The basis for arriving at the proposed rates was by use of the 12358 scale plus distances traversed in New Mexico and in Texas differential territory added to the rates arrived at under the scale, as it is the view of the carriers that the rates in New Mexico should be on a higher basis than the rates to Texas common-point [fol. 530] and Texas differential territory. There are some reductions as well as some advances on the proposed basis. As to whether the proposed basis is one now proposed or one which would be in effect under No. 12358, it is the basis which the carriers should have published in compliance with the order, the differentials being added. We do not contend that the Commission instructed us to publish the differentials, but it is the opinion of the carriers that they are entitled to higher rates from this territory. The rates

shown under the present column are not those which were actually published but are those in effect prior to the Commission's order and in effect to-day in the individual tariffs.

Exhibit 24 is to show the distances, proposed rates on horses and mules, per standard car 36 feet 7 inches in length, also earnings per car-mile from representative points in New Mexico to Kansas City and St. Louis in comparison with car revenue and car-mile earnings on moving commodities from Kansas City and St. Louis. It will be noted that the revenue and earnings per car-mile on horses and mules, even on the proposed rates, are lower in all cases than the revenue per car-mile on the other moving commodities and that the earnings on horses and mules do not bear their just proportion of the transportation costs.

As to the New Mexico intrastate situation, the carriers are arranging to publish a scale of horse and mule rates for application within that state based on 120 per cent of the scale prescribed in Docket No. 12358, which will remove some complaint to be brought out later that the rates from part of Texas differential territory can be broken down by the use of combinations. The rates on the other commodities besides horses and mules shown in Exhibit 24 are rates [fol. 531] which carry the traffic. Some of those rates were fixed by the Commission in the New Mexico case referred to by Mr. Hamilton, and the roofing paper rate was just recently set by the Commission in 95 I. C. C. 273. The rates shown on the other commodities were those prescribed in the New Mexico case plus the general increases and reduction; they include agricultural implements, canned goods, stoves and syrup.

(Exhibits 21 to 24, witness Gillespie, were duly received in evidence.)

Cross-examination.

By Mr. Tedrow:

The rates on horses and mules shown in Exhibit 24 are the proposed rates on the 12358 scale plus the arbitraries which the carriers believe should be published and made applicable. The arbitrary originally published in connection with the scale into Texas was the class A differential

on interstate traffic, which was suspended, and at the hearing in Fort Worth we proposed the class A differential carried in Agent Fonda's I. C. C. 174, which is lower than the differential which the carriers originally proposed; I am not in a position to state precisely how much lower it is. As to what territory in Texas on the Santa Fe is going to be in differential territory under the revised proposal, it is the differential territory prescribed in Fonda's I. C. C. 174. At the time the map, Exhibit 21, was prepared, I was under the impression that Lubbock was in differential territory, which came up to this point, Canyon. In other words, the carriers now propose to apply differential rates for the territory described in the Shreveport case, Docket No. 8418. As to how the carriers propose to align the small differences in Texas differential territory on traffic from Kansas and on traffic from Oklahoma, it is by taking the [fol. 532] territory prescribed in Agent Fonda's I. C. C. 174.

As to why the carriers think the class A differential is the right thing to apply in connection with these rates, it is because we believe the class A is a reasonable basis for this haul in differential territory. As to whether the Commission has condemned the class A basis on horses and mules in Docket No. 13001, I am not familiar with that. I am familiar with the other livestock rates to and from Texas, rates on cattle, sheep and hogs, but I do not at this time know of any other livestock scale on which a differential basis applies in connection with the movement to and from Texas or within Texas, but in the General Livestock Investigation, recently completed, the carriers contended that the rates on livestock were too low. I know there was a decision by the Commission in the Shreveport case, but so far as it applied to cattle and horses I am not familiar with it.

Cross-examination.

By Mr. Bazan:

Considering that the first grouping shown on Exhibit 21 south of Amarillo is in all differential territory, that does not nullify what I intended to show in Exhibit 22; I said that was representative of the Texas differential. At the time the exhibit was prepared I was under the impression that it was in Texas differential territory, but I claim it is

representative. The New Mexico points shown in Exhibit 23 are only representative, but the same basis is proposed at other New Mexico points. As to whether it is the intention of the Santa Fe system lines to meet a lower rate that might be proposed in this proceeding via a greater mileage of the Santa Fe system from Wichita to El Paso, for example, that depends upon certain things such as the volume of the rate. As to whether the Santa Fe will meet the rate [fol. 533] proposed by the Southern Pacific from Wichita to El Paso, as the rates are based on short-line mileage, I believe it would.

We consider that the present car-mile revenues on horses and mules do not bear the proper relative level as to the earnings on the other commodities shown in Exhibit 24. On our proposed basis the relationship is better, but under this scale it does not bear its just proportion. As to what I would consider is a proper relationship of the earnings on horses and mules versus the commodities shown on this exhibit, I have not made any study of it. I can not say that the earnings from Roswell to Kansas City, a distance of 763 miles, 24.4 cents, are in proportion to the earnings on canned goods from Kansas City to the same point of 62.3 cents. It is my contention that the car-mile earnings on horses and mules from Roswell to Kansas City should be approximately the same as from Kansas City to Roswell. I am unable to answer as respects the relationship or the proportion of the car-mile earnings shown on the exhibit as between canned goods and roofing paper from Kansas City to Roswell. As to what relation I think the earnings on horses and mules from Kansas City to Roswell should bear to the earnings on syrup from Kansas City to Roswell, as shown on that exhibit, I stated in the answer to canned goods that they should bear some relationship to it, but as to what per cent I do not know. My answer on the whole subject above which you have been questioning me is that they should bear some relationship but I do not know what that relationship should be.

[fol. 534] Cross-examination.

By Mr. Tanner:

You are correct in understanding that so far as the Santa Fe is concerned all attempts to justify the rates under sus-

pension are abandoned. We are proposing in lieu thereof the basis proposed by Mr. Lynch at the Fort Worth hearing as being a reasonable scale of differentials in Texas differential territory.

Cross-examination.

By Mr. Pelton:

It is a fact that more than half of the mileage south of Amarillo in the blue penciled circle, marked 1 on Exhibit 21, and used in connection with Exhibit 22, is branch line. I can not say that we now move all our transcontinental traffic through Amarillo instead of over the old route via the Raton Mountain. We move part both ways, but I can not say as to what the percentage is. I should say that all our gulf transcontinental freight is moved via the lower line through Sweetwater and Texico. I don't know that our transcontinental line would constitute approximately one-third of the mileage in the circle. If we should move our blue line from Amarillo to Texico to north of that track it would very materially affect our ton-mile movement by reason of our transcontinental traffic. As to what we would consider on a car-mile basis a reasonable rate on horses and mules for 500 to 600 miles with a portion in differential territory, I believe we would be entitled to the scale plus the differential proposed for the haul within differential territory. For the haul between El Paso and Fort Worth of 614 miles, practically one-half being in differential territory, I would consider the 54-cent rate plus the 35-cent differential, or 89 cents, yielding 37 cents per car-mile, to be reasonable. As to a number of schedules being carried in Tariff 9916 be- [fol. 535] tween points in New Mexico and points in Colorado and between points in Kansas and Oklahoma that yield 20 to 25 cents per car-mile, we have stated in this proceeding that as soon as the Commission makes its decision it is the purpose to revise other rates from New Mexico to interstate points. It should have been done at the time of this docket, but through the oversight of the parties handling it no correction was made in those rates. We expect to increase them to the basis of the 12358 scale plus the differentials if we are awarded differentials. As to whether there is no differential territory to traverse, we figure that New Mexico is the same as Texas differential territory and should be

treated as such. I can not say whether we just recently came to that conclusion, since this decision came out. We have always contended that the lower rates we have maintained for 10 or 12 years were on too low a basis but we have never attempted to increase them, not until recently anyway.

As to how I arrived at the figures on Exhibit 23, for instance, the present rate of $102.85 from Clovis to Fort Worth, the present rate is based on combination over Texico or Farwell, Texas. Each of the rates to Fort Worth is a combination rate, but every other rate on the exhibit is a through rate except to St. Louis; we have no through rates to St. Louis, they being on combinations also. As to the rate from Clovis to St. Louis of $190.50 for 899 miles with the rate to Fort Worth $182.85 for 423 miles, the rate to St. Louis as figured is not based combination over Kansas City. As to whether we propose to further increase this great discrepancy by adding a heavy differential on the Fort Worth traffic, we intend to publish specific rates to Fort Worth from New Mexico points.

[fol. 536] Examination.

By Exam. Eshelman:

With respect to the groups that are outlined in blue pencil on Exhibit 21, the rates now under suspension apply only from the one designated as group 1. The Santa Fe did not publish rates from New Mexico generally in respect to the Commission's order, as through error that was overlooked, but in the proposals I am now making this morning we are posposing rates from New Mexico points generally to the markets involved in Docket No. 12358. Our proposal is not limited to groups 2 and 3 as shown on the map, but cover the whole State of New Mexico.

M. J. Dowlin was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination.

By Mr. Thompson:

I am Assistant General Freight Agent of the Chicago, Rock Island and Gulf Railway Company, Fort Worth,

Texas. At the Fort Worth hearing witness Lynch introduced as Exhibit 1 a map of the State of Texas showing by counties the population per square mile according to the 1920 census. My Exhibit 25 is a similar map of New Mexico showing exactly the same information as to population in New Mexico that was shown for Texas. While I do not claim the population is a controlling factor in the making of rates, I think it is to a certain extent an index to the general conditions which give rise to commercial traffic.

Exhibit 26 is a map of the Rock Island lines west of the Missouri River. While it shows only the Rock Island lines as a railroad, it has spotted geographically a number of other important points in the States traversed by the Rock Island so as to give a good idea of the various points involved.

[fol. 537] Exhibit 27 is a statement showing present rates on horses and mules, carloads, to and from St. Louis, Kansas City, Oklahoma City, and Wichita, from and to respective representative points in New Mexico on the Rock Island and Southern Pacific lines. I have shown the distance, the present rates, the suspended rates, the distance in differential territory, the class A differentials from St. Louis, which is the basis that has been suspended, the Texas class A differentials for the distance traversed in differential territory, the amount of the differentials for that distance, and the rate in dollars and cents per car which is here proposed, namely the 12358 scale plus the class A differentials for the haul in differential territory. The differentials are based on the distance traversed in differential territory, as shown in column headed E with red pencil. When the Shreveport case was initiated, as I recall it, the class scales, as an illustration, ended at 245 miles, beyond which all rates were blanketed at that maximum rate within common-point territory. By the decision in the Shreveport case the mileage as to class rates was extended to 500 miles, and as I recall the differential scale was also extended. The decision in that case will show that in detail. Before the Shreveport decision was handed down, the rates in differential territory were on a graduated mileage scale.

It is true that the Commission prescribed no differentials on livestock for the reason, it is our contention, that the

Texas Commission previously had none on livestock. It was the custom of the Texas Commission to prescribe differentials in connection with those scales which reached their maximum at comparatively short distances, but such scales as the livestock, brick, and several others which I can not at the moment recall, which were long scales, there [fol. 538] were no differentials in connection with them. So far as I can recall there are not and never have been Commission-prescribed differentials on any class of livestock in Texas differential territory, either intrastate or interstate. The basis for the Shreveport case was the question of preference and prejudice, although there was a great deal of testimony that went in from both sides in regard to the reasonableness of the rates, which you can not keep out of a discrimination case.

Exhibit 28 is a statement showing the information indicated on the title page, which I believe is self-explanatory.

Exhibit 29 is a statement showing the proposed rates in cents per hundred pounds, in dollars and cents per standard 36 foot car, and earnings per ton-mile and per car-mile from representative New Mexico points to Oklahoma City, Fort Worth, Wichita, Kansas City, and St. Louis.

The contents of Exhibit 30 are also shown on the title page. This information is taken by me from a statement compiled by our General Auditor showing the result of the operation of the Rock Island lines for the calendar year 1924. It has been my contention in a number of livestock cases that livestock rates might properly be higher than they are at the present time. There are a number of factors entering into the handling of livestock which are not present in connection with other traffic, one of which is the claim hazard. Page 3 of this exhibit shows the ratio of loss and damage claim payments to revenue earned on horses and mules as well as other livestock and other traffic as segregated in the General Report to which I have referred. The ratio on horses and mules is 7.26 per cent or $4.98 per car.

[fol. 539] Aside from the claim hazard in connection with livestock movement, including horses and mules, there is the matter of the class of service that has to be maintained, the special facilities such as loading chutes, stock pens, etc., which must be provided, and the empty car movement. Aside from empty tank cars, I believe I am safe in saying

that the empty haul in connection with the livestock traffic is greater than on any other particular class of traffic. The exhibits I have offered in this case are true and correct to the best of my knowledge. Most of the figures I took from the original reports myself and made a great many of the calculations.

(Exhibits 25 to 30, witness Dowlin, were duly received in evidence.)

Cross-examination.

By Mr. Tanner:

It is the intention of the carriers in submitting this proposal to comply literally with the decision in Docket No. 12358 as we understand it. As we construe the statement on page 198 of the report in 93 I. C. C., that means the Texas common-point territory line fixed by this Commission in the Shreveport case, or as subsequently amended, and in addition thereto it includes the line of the F. W. & D. C. north of Amarillo. When I read that decision I differed with a great many of the others as to the proper construction to be placed on it. The line of the Rock Island east of Amarillo to the Oklahoma State line is at present in differential territory. In publishing the rates in Southwestern Lines Tariff No. 131, Mr. Leland applied the scale from those points into Oklahoma City, Wichita, etc., and I have therefore concluded that the General Traffic Committee at St. Louis construed it to exclude also from differential territory the part of our line east of Amarillo. There [fol. 540] was no fourth section relief that I recall and we would have to apply the Amarillo rate as maximum unless we did secure fourth section relief.

The line of the Panhandle & Santa Fe from Higgins, in the extreme northeastern part of the Panhandle through to Farwell, and from Canyon on down to Sweetwater, has always been in common-point territory, and I can not understand why this committee in attempting to revise these rates should tack on a differential at Lubbock, because under the spirit of the decision I do not think it is justified. There should be differentials under the decision on the Santa Fe line running from Farwell to Lubbock and on all these branches where there are differentials at present.

Redirect examination (pro se):

The Witness: Just one further statement: The rates on horses and mules within New Mexico have been neglected for a great many years. It is my belief that the reson for it was that there has been no movement under these particular rates, at least none of sufficient volume to draw the especial attention of our office, and I have not personally noticed the low level of those rates as shown by the exhibits introduced here. They are lower than the 12358 scale at the present time. I consider them subnormal rates, and if left standing they would defeat the joint through rates proposed here by combinations over the border points. We propose to remedy that by immediately revising and republishing rates intrastate between New Mexico points for application on both intrastate and interstate traffic, subject, of course, to the approval of the Corporation Commission of New Mexico, which we think there will be no difficulty in securing on the showing we can make.

[fol. 541] Recross-examination

By Mr. Bazan:

From a revenue point I do not think the proposed increased rates from New Mexico will help along this small movement at all. I do not figure the shipments will decrease; I do not think they can. I do not think the increase on the movement will mean anything in dollars and cents, because I do not think the class of stock sold on the markets principally involved in this case are of the class of character for which there is any great demand at those markets.

Recross-examination.

By Mr. Pelton:

Our entre line east and west through Amarillo is in differential territory, generally speaking, also the line passing diagonally through the Panhandle from Texhoma through Dalhart to Naravisa, N. M., is in differential territory and always has been. Under the spirit of the decision we can not get any differentials between Dalhart and Texhoma. There is no station at Bravo, not even a side track. The

differential of 27.5 cents from St. Louis to Endee, shown on page 1 of Exhibit 27, is not the differential we propose to establish; the proposed differential is 8 cents; although the Texas differential does not apply to Endee, we are proposing to extend it over the line from Amarillo.

Respondents rest.

E. R. TANNER was thereupon called as a witness, and, having been duly sworn, testified in substance as follows:

Direct examination (pro se):

I am Traffic Manager of the El Paso Freight Bureau of El Paso, Texas, which receives its chief revenue from the El Paso Chamber of Commerce. From a practical standpoint, however, it operates as a part of the Chamber of Commerce for the reason that any transportation matter affect- [fol. 542] ing the community as a whole is handled by this Bureau. The position of the El Paso Freight Bureau regarding the rates under suspension in this proceeding as well as those now proposed by respondents is that such rates are unreasonable per se, or unauthorized by the decision in Docket No. 12358 and related cases, and that the suspended rates should not have been published by the carriers. It is furthermore our position that the exaction of any rates in excess of those prescribed by the Commission in Docket No. 12358 are unreasonable.

As a general proposition the class and commodity rates to the so-called El Paso group from interstate points bear no definite relationship to the rates to Texas common points, the rates to the El Paso group having been set as a result of the Commission's decision in Corporation Commission of New Mexico v. Santa Fe, 34 I. C. C. 292. The mere fact that there exists a certain difference in the class A rates to differential territory as against those to Texas common-point territory does not in and of itself justify the use of differential rates in arriving at reasonable commodity rates to apply to and from points in differential territory on livestock.

The mileage scale of rates applicable to the transportation of horses and mules to, from, and between points in so-called differential territory in Texas on intrastate and

interstate traffic has at all times in the past been the same as that applicable to the transportation of horses and mules to, from, and between points in the so-called Texas common-point territory. This is also true as to livestock rates generally between points in Texas. Certain small arbitraries ranging from 2.5 to 4 cents per 100 pounds in addition to the regular mileage scale have applied and now apply and [fol. 543] accrue to certain small branch or feeder lines in Texas, such as the Barlett Northern, Motley County, Roby & Northern, M., E. F. & S. E., and several others. Some of the small lines just mentioned are wholly in common-point territory and some are in so-called differential territory, and these arbitraries, in my opinion, really should not be termed differentials as that term is generally used. We have no objection to the continued use of any such specific arbitraries accruing to the small lines where they are now applicable.

The present mileage scale of rates on horses and mules applying on Texas intrastate and interstate traffic are the rates prescribed in Docket No. 8418, the so-called Shreveport case, 48 I. C. C. 312, with the general percentage advances and reductions applied thereto. The scale prescribed by the Commission was for application uniformly throughout common-point territory and differential territory in Texas, no objection whatever being made in the treatment of the two territories. Rates purporting to be in compliance with the decision in the Shreveport case were first published in Texas Lines Tariff 2-B, Fonda's I. C. C. 33, effective November 1, 1916. As originally published, however, the rates were not on the exact scale prescribed and in Texas Lines Tariff 2-C, Fonda's I. C. C. 51, effective May 1, 1918, some slight reductions were made in the rates to line them up with those actually prescribed. The only changes in the rates since that time have been the general advances and reductions.

The Commission in the Shreveport case prescribed a minimum weight of 22,000 pounds for standard size cars and this minimum weight was increased to 23,000 pounds effective February 20, 1920, in Texas Lines Tariff 2-D, Fonda's I. C. C. 65. The question of adding differential [fol. 544] rates on all traffic involved in the Shreveport case to, from, and between points in Texas differential territory

was squarely before the Commission and that body declined to prescribe differential rates on livestock.

As to the statement on page 482 of the Commission's report in Docket No. 12358 that the defendants sought the establishment of class B rates and that no one seriously questioned the fact that class A rates were too high for application to horse and mule traffic, the mileage differential arbitraries now proposed by respondents range from 2 cents to 24.5 cents per 100 pounds in addition to the regular mileage scale prescribed in Docket No. 12358 for the total distance from origin to destination. It should be clearly understood that the differential rates published in Item 1005 of Texas Lines Tariff 2-I, Fonda's I. C. C. 174, do not apply on livestock traffic of any description, but only on certain specified commodities making reference thereto.

El Paso is situated approximately in the center of an extensive agricultural section. The farms are irrigated under the Elephant Butte project of the U. S. Reclamation Service. There are under cultivation at the present time approximately 130,000 acres, and if the acreage on the Mexican side is included the total would be approximately 150,000 acres. The cultivated area on the U. S. side extends approximately from Hatch and Rincon, N. M., to Sierra Blanca, Texas, on the T. & P. and G. H. & S. A. Railways. There is also under cultivation approximately 25,000 acres in the vicinity of Tularosa, N. M., and about 5,000 acres in the Cloudcroft and Alamogordo sections of New Mexico. South of Alpine and Marfa, Texas, in the so-called Big Bend territory, cotton is also being cultivated. [fol. 545] Agricultural products are also raised in the territory between Uvalde and San Antonio, Texas, on the G. H. & S. A. Railway. The principal crops are alfalfa hay, fruit, melons and tomatoes, with some cabbage raised around the Cloudcroft territory and some apples.

The greater portion of the horses and mules used on the farms in the vicinity of El Paso are shipped in from various points for the reason that it has proven to be too expensive as a general proposition to raise these animals on the irrigated farms. The agricultural products of this section come in competition with the agricultural products of other sections in common-point territory, and I see no reason why the farmers in the vicinity of El Paso should now be called upon to pay any higher rates on horses and

mules to this section than they have been paying in the past.

Exhibit 31 is a statement showing population for the years 1900, 1910, and 1920 of counties wholly or partly in Texas differential territory to and from which differential rates are proposed by respondents. In compiling the information shown on this exhibit I have used the description of differential territory as indicated by the points shown in Items 84 and 90, Leland's I. C. C. 1735. It will be seen from page 2 that the increase in population in 1910 over 1900 was 79.4 per cent, and the increase in 1920 over 1910 was 39.1 per cent. The total square miles of the counties shown on this exhibit is 120,956, making an average of 4.68 persons per square mile for the year 1920. The population per square mile for 1920 of Arizona was 2.9, New Mexico 2.9, Wyoming 2, Montana 3.8, and Colorado 9.1. Since 1920 there has been a decided improvement in population in western Texas, in southern Texas, and in the Panhandle section of Texas on account of increased acreage devoted to agriculture.

[fol. 546] Exhibit 32 is a statement showing present Texas interstate and intrastate mileage rates on horses and mules to and from points in differential territory compared with suspended Texas interstate rates on horses and mules to or from the same points in differential territory, and also a comparison with respondents' proposed rates to and from El Paso. There is further shown on this exhibit the proposed advances in interstate rates and the difference that will exist between present intrastate rates and proposed interstate rates. I have used the minimum haul rates and thereafter have used for comparative purposes the rates for each 25 mile break on out to 1,000 miles. I did not consider it necessary to extend the scale beyond 1,000 miles, as that distance would, as a practical matter, cover all movements between points in Texas.

The per car charges shown on the exhibit are based on a minimum weight of 23,000 pounds, which applies for cars 36 feet 7 inches and under in length. The exhibit shows that the advances in the present Texas interstate mileage rates under the proposal of respondents range from 2 cents at 10 miles to 43 cents at 1,000 miles, with an average advance of 28.29 cents per 10[illegible] pounds. The exhibit also shows that the respondents' proposed advances per

car of 23,000 pounds range from $4.60 at 10 miles to 98.90 at 1,000 miles, with an average per car advance of $65.07. The average advance in the present rates is 61.7 per cent under the respondents' proposal; in other words, the respondents here propose to apply on Texas interstate traffic a mileage scale 61.7 per cent higher than the scale that will be applicable to Texas intrastate traffic.

Examiner Eshelman: How do you determine the actual distance traversed in differential territory?

The Witness: From El Paso, Mr. Examiner, any rate going east bound would move in differential territory, say you would take a shipment moving from 10 miles out of [fol. 547] El Paso, which would be 16 cents, which is the rate under Docket No. 12358 plus the minimum differential of 2 cents. As to whether common-point territory is reached at different distances from El Paso on different lines, eastbound on the Texas and Pacific from El Paso you go through differential territory until you reach the maximum differential; on the Southern Pacific, of course, they have a longer differential haul, but your maximum is reached at 251 miles. That, however, will not make a difference in the rates; thus, if a shipment moves from El Paso eastbound 350 miles it would pay 72.5 cents, irrespective of whether it moves that distance on the Texas and Pacific or on the Southern Pacific. We do not reach common-point territory on any line within the maximum differential distance.

Exhibit 33 is a statement showing the present Texas interstate mileage rates on horses and mules to and from points in Texas common-point territory and compares them with the suspended Texas rates to and from points in differential territory shown under Note 1, and also with respondents' proposed rate to and from El Paso. The exhibit further shows the percentage of respondents' proposed interstate rates to and from differential territory of the present interstate common-point territory rates. The rates shown on this exhibit to and from Texas common-point territory are those prescribed in Docket No. 12358, and are now published in Agent Fonda's I. C. C. 174.

The respondents' proposed interstate differential rates range from 112 to 160 per cent of present interstate common-point rates, with an average of 140 per cent. Respondents' proposed rates to and from Texas differential

territory would average $48.81 per car of 23,000 pounds higher than the rates now applicable to and from Texas common-point territory.

[fol. 548] As to how I got such a mileage scale as is outlined in the second column on Exhibit 33, for instance, 52 cents for 10 miles, Item 1680-A of Supplement 9 to Texas Lines Tariff 2-I publishes mileage rates in purported compliance with the decision in Docket No. 12358. Note 1 of 1680-A provides an exception against the application of this mileage scale to and from differential territory, and Item 1682 provides under paragraph A that on interstate shipments to and from points in differential territory the following differential rates will be added to rates determined under the provisions of Item 1680-A. Item 1682 also provides that on interstate shipments from a point in differential territory to a point in differential territory these specific differentials will apply for the points of origin or destination whichever is higher.

Taking a shipment moving under the minimum rate of the scale, which is 10 miles, Item 1680 under column 1, interstate, shows a single-line rate of 14 cents. To this single-line rate of 14 cents, Item 1682 provides that to and from El Paso a differential rate of 38 cents shall be added to the rate determined under Item 1680-A, which makes 52 cents. The mileage scale would therefore vary with regard to whatever point you are going from or to in differential territory. That 38 cents is added all down the line in the first column to get the rates in the second column, and up to 225 miles the differential is higher than the rate. The maximum class A differential between points in Texas is 24.5 cents, and the flat 38 cents is the difference between the class A rate from St. Louis to Texas common-point territory and the class A rate from St. Louis to El Paso.

Exhibit 34 shows respondents' proposed rates on horses [fol. 549] and mules and the revenue in connection therewith on a minimum car *car* of 23,000 pounds to and from El Paso for given distances. The exhibit also shows the distance a similar shipment of horses and mules would be transported under present rates. A shipment transported 200 miles under respondents' proposed rates, for example, could be transported 600 miles under the present rates. The exhibit clearly shows how much greater

distance a car can be transported under the present rates than would be possible under the rates proposed by respondents. In using the words proposed rates I have reference to rates that are being proposed in this proceeding as distinguished from the rates under suspension.

Exhibit 35 compares the present Texas interstate mileage rates on beef cattle with the suspended horse and mule rates to or from points in differential territory and with the respondents' proposed rates to and from El Paso. It also shows the percentages respondents' proposed rates to and from El Paso are of the beef cattle rates. The beef cattle rates shown on this exhibit apply uniformly throughout Texas common-point territory and Texas differential territory, which is also true of the present rates on horses and mules. This beef cattle scale is generally referred to as the modified 1716 scale. It is the scale prescribed by the Commission at 23 I. C. C. 656, with the general advances and reductions applied thereto, and as modified by the Director General. It will be seen that the percentages respondents' proposed horse and mule rates are of present beef cattle rates range from 151 to 197 per cent, with an average of 178. We have received at El Paso horses and mules from Denver, from Wichita, and from Kansas City, and we are now going to receive some from Omaha, but I do not have any idea as to what is the aver- [fol. 550] age haul of horses and mules going into or out of El Paso.

Exhibit 36 shows present interstate Texas mileage rates to or from points in differential territory on commodities on which no differentials are applicable in comparison with suspended horse and mule rates to or from points in differential territory shown on the exhibit, and in comparison with respondents' proposed rates on horses and mules to or from El Paso for equal distances. The exhibit is self-explanatory but I direct special attention to the comparisons shown on sheet 2 between the present rates on packing-house products and the respondents' proposed rates on horses and mules. The packing-house products rates shown apply uniformly throughout common-point and differential territories and are the rates prescribed by the Commission in the 1716 cases with the general advances and reductions applied thereto. The rates on packing-

house products between El Paso and New Mexico points are before this Commission now; these are the Texas rates. All the commodities shown in the second column move uniformly in common-point and differential territories without specific added differentials.

Exhibit 37 shows the maximum Texas mileage interstate rates on various commodities to or from points in differential territory shown in Note 1, in connection with which rates specific mileage differentials are applicable and have been included in the rates shown, compared with suspended horse and mule rates and with respondents' proposed rates to and from El Paso and other points for equal distances. The distance used is in each instance the distance for which the maximum mileage rate is reached on commodities other than horses and mules. The rates shown on horses and mules are those for the actual distances given on the exhibit.

[fol. 551] Exhibit 38 makes a comparison of the suspended Texas interstate mileage rates on horses and mules to or from points in differential territory shown in Note 1 of the exhibit, and respondents' proposed rates to or from El Paso, with present rates applicable to horses and mules between El Paso and points in Arizona and New Mexico, also with rates between Denver and points in Colorado and Wyoming. It will be noted that the rates between El Paso and points west in Arizona and New Mexico and between El Paso and points north of El Paso in New Mexico are on a substantially lower level than the rates proposed by the respondents to be applied between El Paso and points east of El Paso in Texas differential and common-point territories.

In all cases involving rates on classes and commodities between El Paso and points west in Arizona, New Mexico, and California, this Commission has prescribed rates on a substantially higher level than that which existed between points El Paso and east. No transportation conditions of any character exist in so-called Texas differential territory that warrants higher rates, mile for mile, than apply westbound from El Paso or between points in New Mexico and Arizona for equal distances. In all proceedings before the regulatory bodies we have always met the plea of the railroads that they were entitled to receive higher revenue on traffic between El Paso and points in

New Mexico and Arizona than on lighter traffic moving between El Paso and points east. There are comparatively few commodities moving between El Paso and points west in Arizona, New Mexico, and California that take as low rates as between El Paso and points east. It will also be noted from the exhibit that the rates between Denver and points in Colorado and Wyoming are substantially below those proposed by respondents for equal distances.

[fol. 552] Answering the question asked, the livestock rates generally between El Paso and Arizona points are now before the Commission in several cases. One of the cases is I. & S. Docket 2038, which involves rates between Arizona, New Mexico and El Paso. The carriers in that case attempted to advance the rates and we had them suspended. In all the cases involved with which I am familiar, the carriers have been uniform as to the basis of rates that they propose between El Paso and Arizona; I expected that when I came over here.

Exhibit 39 shows representative examples of present and suspended rates proposed by respondents, together with revenue per car-mile on horses and mules from El Paso, Pecos, and Alpine, Texas, to Wichita, Kansas City, and Oklahoma City compared with present rates on horses and mules from San Antonio and points in New Mexico to the same destinations. The exhibit also shows the Docket 12358 rates for the distances stated on the exhibit. On page 3 of Exhibit 3 respondents show only one rate to Wichita from El Paso and Pecos. The rate via Santa Fe route No. 2, the present rate, is a mileage rate applicable for the distance shown. The present rates from El Paso, Pecos, and Alpine to Wichita produce as high car-mile revenue as the present rates from San Antonio and the New Mexico points shown. The mileage from El Paso, as a usual thing, is for the longer distances.

Hatch is a point on the Santa Fe a few miles west of Rincon, N. M. Newman is located on the Southern Pacific 19 miles north of El Paso. Berino is a point located on the Santa Fe a very short distance north of El Paso. Deming is located 88 miles west of El Paso. Under the respondents' proposed rates to Wichita the revenue per car-mile will be very much in excess of that on similar traffic from [fol. 553] points in the same general territory.

The present rate to Kansas City from El Paso, Pecos, and Alpine yield higher car-mile earnings than rates on

similar traffic from San Antonio and the New Mexico points shown, yet the carriers are here seeking still higher revenue on shipments from these particular points, with a slight reduction from Pecos. To Oklahoma City the present rates from El Paso, Pecos, and Alpine yield revenue in line with the revenue earned on shipments from New Mexico points, but here again the carriers propose to substantially increase the rates from Alpine and Pecos. The present rates from El Paso, Alpine, and Pecos to Kansas City, Wichita, and St. Louis are rates that were in effect prior to June 25, 1925 [1918], with the general percentage advances and reductions applied thereto. The San Antonio rates shown on this exhibit are the rates prescribed in Docket No. 12358. The rate from San Antonio to St. Louis and Kansas City in effect was 57.5 cents prior to June 25, 1918, whereas the rate to these same points from El Paso, Pecos, and Alpine was 67.5 cents. It therefore will be seen that there was only a 10-cent spread in the rates prior to June 25, 1918, whereas there is now a spread of 21.5 cents in the rates to Kansas City.

Exhibit 40 shows representative examples of present suspended and respondents' proposed rates and car-mile revenue on horses and mules from Wichita, Kansas City, and Oklahoma City to El Paso, Pecos, and Alpine compared with present rates and car-mile revenue on horses and mules from the same points of origin to San Antonio and points in New Mexico. There is also shown what the rates are for the distances given by the use of Docket No. 12358 without the addition of any differentials. The reve- [fol. 554] nue earned on the present rates to El Paso, Pecos, and Alpine is as great as that earned on similar traffic to San Antonio and to New Mexico points in the vicinity of El Paso. Under the rates proposed by respondents the revenue earned would be greatly in excess of that derived on the same traffic in the same general territory where transportation conditions are substantially the same.

The remarks made with respect to rates to Wichita apply with equal force to present and proposed rates from Kansas City and Oklahoma City. Answering the question asked, in the comparison there used the haul to San Antonio would be entirely in common-point territory.

Exhibit 41 compares respondents' proposed rates on horses and mules to and from El Paso with present mileage

rates between Texas common points and interstate points, also with present mileage rates on horses and mules between points in western territory and mountain-Pacific territory. Columns C, D, and E all name the same basis of rates, although they are published in different tariffs and apply to different points. The scales shown under those columns have not been cancelled and are therefore under suspension, and all of the scales with which comparison is made show they are substantially lower than the rates proposed by respondents to or from El Paso. Some of the scales referred to apply between points where, as before stated, the transportation conditions are considered by the carriers, and have always been considered by this Commission, more severe than those obtaining in Texas differential territory.

As to what carriers I refer to, every carrier that has appeared in any rate case since I have been in El Paso has taken the position that the rates from El Paso to points west should take a higher level than that applying [fol. 555] between points in Texas differential territory, and as a matter of fact the rates on commodities generally from El Paso to points west are on a higher level than between El Paso and points east. As to whether the carriers referred to are those operating west of El Paso, the G., H. & S. A. Railway, but I do not know as to the Texas and Pacific, has participated in many of the cases since I have been there. The Santa Fe has taken that position. I have participated in a case involving rates east of El Paso, but I have never understood the carriers to state that the rates in mid-west territory should be as high as those west of El Paso. It might be true that in the Payton case it was the contention of the E. P. & S. W. that the rates from El Paso to New Mexico should be on the same basis, but that is not true to-day.

Exhibit 42 makes comparison of suspended rates on horses and mules to and from points in differential territory and respondents' proposed rates to and from El Paso with the present rates applying between points in mountain-Pacific territory for similar distances. In making the comparisons shown on this exhibit I have endeavored to use each 50-mile break in the scale, beginning at 500 miles, although it was not possible to do so in all cases, as my time was entirely too short to make a complete showing.

The exhibit clearly shows that the rates on horses and mules in mountain-Pacific territory are on a lower level than respondents are proposing for application in Texas differential territory, notwithstanding the rates on other commodities as a general rule are the reverse. At the bottom of the exhibit is shown a rate of $167.90 per car from Denver to El Paso. Through error there have been shown on this exhibit a suspended rate and a proposed rate from [fol. 556] Denver to El Paso, as no change has been made in the present rate and it is not involved in this proceeding. Considerable horses and mules have moved under that rate from Denver to El Paso and will continue to do so.

Exhibit 43 compares the present rates on beef cattle between El Paso, Pecos, and Alpine and Wichita, Kansas City and Oklahoma City with present rates and respondents' proposed rates on horses and mules from and to the same points. The exhibit shows that the present rates on horses and mules are greatly in excess of the present rates on beef cattle between the same points.

Exhibit 44 shows the present class A rates from Kansas City and St. Louis to various Texas points compared with present and proposed horse and mule rates from and to the same points. It also shows the percentages, the present and respondents' proposed rates on horses and mules are of the present class A rates. The present rates on horses and mules from St. Louis and Kansas City to El Paso, Pecos, Sierra Blanca and Alpine are a greater percentage of the present class A rates to those points than are the present horse and mule rates of the present class A rates to points in Texas common-point territory shown on the exhibit. There is also shown at the bottom of the exhibit the percentage relation between the class A rates to Texas common points and the present horse and mule rates to Texas common points, using the rates in Item 48 of Leland's I. C. C. 1735 for average distance of 800 miles, which is generally considered the average distance from St. Louis to Texas common points. This further indicates that common-point territory is paying a lower percentage of present class rates than respondents propose to make El Paso and other differential points pay. It occurs to me that there should — a proposal on the part of respondents to lower the present [fol. 557] rates to differential territory rather than to in-

crease them. There can be little justification, in my opinion, for making us pay a higher percentage of class A rates than the communities located in Texas common-point territory.

Exhibit 45 compares the present interstate mileage rates on horses and mules applicable between El Paso and points in Kansas and Oklahoma with respondents' proposed rates between El Paso and interstate points; also, with present and proposed New Mexico interstate rates, also, with present rates between El Paso and points in New Mexico on the Santa Fe Railway; also, with present rates on beef cattle between El Paso and Oklahoma and Kansas points. The rates on beef cattle shown on this exhibit are the so-called modified 1716 scale rates.

The exhibit shows that there is at present in effect on horses and mules on interstate traffic to and from El Paso and on intrastate traffic in New Mexico the same mileage scale of rates, and that the Rock Island lines are proposing heavy increases in the intrastate rates to and from El Paso, while at the same time they propose to continue the present interstate rates on New Mexico business, although the transportation will be in the same general territory and under the same general transportation conditions. It is also shown that the present rates between El Paso and points in New Mexico on the Santa Fe Railway are on a considerably lower level than the respondents propose to apply to and from El Paso, although here again the transportation conditions are no more severe than those to or from El Paso. In this connection, there is very grave doubt in my mind that the interstate rates published in C., R. I. & P. I. C. C. No. C-11381 have actually been suspended. This view is concurred in by the Southern Pacific representative [fol. 558] at El Paso, Mr. Fielding, to whom I have talked.

(Exhibits 31 to 45, Witness Tanner, were duly received in evidence.)

Cross-examination.

By Mr. Pelton:

There has not been any differential on horses and mules during the period in which the population of the various counties is shown on page 2 of Exhibit 31 about 110 per cent

in 1919 and 1920, so that the carriers waited twenty years and let the population more than double before they have tried to get those rates increased.

Cross-examination.

By Mr. Hamilton:

As to whether there was anything but livestock that moved in this territory when these rates were established, the particular rates between points in Texas on horses and mules and livestock have not really been in effect for 20 years. The horse and mule rates were put in as a result of the decision in Docket No. 8418, the so-called Shreveport case. On livestock generally, I would say it is true that the general rate base on livestock in differential territory, New Mexico and Arizona, was established at a time when there was an enormous movement of livestock. I would not like to make a definite statement on horses and mules. It is principally a livestock country, but in the last few years it has had an extensive agricultural development, but I won't admit it was at the expense of the livestock industry.

As to whether we now have anything like the cattle population in that district that we had 10 years ago, I will answer in a very broad way, as I do not like to make a definite statement. The cattle population in that territory now is not as great as it was 20 years ago, probably, though 20 years ago I knew nothing about cattle and very little now, [fol. 559] but strictly our position on this differential on livestock is that it is a commodity that must of necessity move under low rates and that no differentials are proper. As a matter of fact, we are getting to be quite an extensive agricultural section, particularly in the vicinity of El Paso, and we certainly should not put any additional burdens on the community by adding anything on horse and mule rates to El Paso, because that is where the majority of the horse and mule traffic will move, if there is any.

As I testified, I think it is true as a general proposition that we are producing no horses and mules in that territory; it is more and more producing farm products.

As to whether we are proposing to reduce rates on something we do not raise that will cover only a few shipments and not bear its full portion of the transportation burden at the expense of the commodities we do produce, I thought

I made myself clear. You have horses and mules moving into the Valley adjacent to El Paso, which is becoming a very expensive agricultural section. They must have horses and mules shipped in there, they have got to pay the transportation charges which are published, and they compete on the agricultural products with the points in common-point territory and with other communities, so any additional overhead that you place on horses and mules is naturally going to be reflected against what they really might make when they send their products to market.

Cross-examination.

By Mr. Andrews:

As to whether my principal protest is that the rates on horses and mules will be increased into this recently developed agricultural section, it goes to that to a certain extent, and naturally it would go also to the extent that we [fol. 560] might have horse and mule traffic into El Paso to be used in various industries located there. As to whether I have in mind that the bulk of the movement is inbound, I am naturally very much interested in either the inbound or outbound rates. We never know when we are going to have a movement of horses and mules outbound. I do not want the rates to be on such a high level that when a movement occurs I will be in the position of saying I did not make any objection to increasing these rates northbound; as a matter of fact, in certain circumstances the rates from El Paso to other points come into question very materially when you have any through rates from points west of El Paso, as they are used as proportional rates, so to speak, and should not be on too high a level.

I won't say there is an actual horse and mule market at El Paso, but they have horse and mule dealers there. I am unable to state roughly the extent of the movement to and from El Paso in a year. The truth of the matter is that it is just handled as a community proposition and I have not inquired about it. As to the interest of the agricultural people and the people in El Paso in these freight rates, anyone who pays for transportation is interested in the level of the freight rate. I attended the hearings at Fort Worth and Austin in the recent big livestock cases, but not the one at Topeka, and I did not hear the testimony of the witnesses

that the producers of the horses and mules on the farms bore the burden of the freight rates to destination. As to whether I agree with that testimony, there are so many angles from which you might look at the question that I would hate to express an opinion about it; as a usual thing the burden is borne to a certain extent by the ultimate con- [fol. 561] sumer. Certainly the users and purchasers at El Paso bear those rates. Naturally the man who is in the business and sells to the farmers is not there for his health and he is going to make some money over and above the cost of his horses and mules and the transportation.

For equal distances it is my contention that the rates on horses and mules between El Paso and Fort Worth should be on as low a level as the rates between Wichita and Fort Worth, for example. I haven't taken that position with regard to commodity rates generally, but I do on livestock. The same statement applies to the rates between El Paso and Kansas City as compared with those between Wichita and Kansas City. As to whether I think we should pay any higher rates from El Paso to Kansas City, mile for mile, than they pay from Denver to Kansas City on horses and mules, my answer would be I do not think we should, as the traffic must necessarily move under as low rates as possible. As to whether there should be one uniform scale throughout this entire territory, including differential territory and El Paso, I think there should be between points in the Southwest generally, including New Mexico.

Cross-examination.

By Mr. Thompson:

In speaking of the cultivated area in the Rio Grande Valley extending from El Paso to Sierra Blanca, while it is true that the railroads pass through that cultivated area for only 25 or 30 miles, and Sierra Blanca is about 90 miles from El Paso, the commodities that are produced are hauled either by wagon or truck to the railroad points to which the cultivated district is tributary. In preparing Exhibit 37 I did not obtain the information as to the minimum weights applying to the rates on the other commodities used for comparison with horses and mules, but I might say that, outside of fresh fruits and potatoes and limes, they usually move under minimum weights in excess of that on horses and mules.

[fol. 562] B. D. PELTON was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination (pro se):

Exhibit 46 shows the revenue per ton-mile, operating ratio (expenses to revenue) and ton-miles of revenue freight in Texas differential territory and in Texas common-point territory. In explanation of the selection of these roads, I took the main roads in differential territory and matched them with roads in common-point territory of about the same mileage as nearly as I could. I did the same as respects the smaller roads, second and third class, just going down the line and taking them alphabetically from the Thirty-Eighth Annual Report of the Railroad Commission of Texas for 1934 until I reached the end, and I was just a few miles short on common-point mileage.

This shows the ton-mile revenue freight per mile of road in common-point territory to be 143,033 and in differential territory 254,473. The operating ratio (expenses to revenue) in differential territory was 87.89 and in common-point territory 108. Under the revenues per ton-mile, as shown here, the W. M. W. & N. W. shows .50654 cents, which is according to the figures in the report.

Exhibit 47 on the first page shows rates and revenue on horses and mules between Kansas City and New Mexico points on the Rock Island and the El Paso & Southwestern. The haul on this traffic would be through Texas differential territory. Page 2 shows rates and revenue on horses and mules between Kansas City and points in Arizona and New Mexico and California via the Santa Fe. The average earnings there are practically the same, 1.62 cents per ton mile. [fol. 563] Page 3 shows the rates and revenue on horses and mules from points in Kansas, also Joplin, Mo., and Superior, Neb., via the Rock Island and Santa Fe through the Texas Panhandle. The scale runs 500 miles and extends to Coleman.

The fourth page shows rates and revenue on horses and mules for Arizona and New Mexico interstate traffic and Arizona and New Mexico intrastate traffic. Those schedules are all lower than the Shreveport scale and have been voluntarily maintained by the carriers a long term of years, 10 years I can safely say. I would also like to point out

similar schedules to these which I have not been able to draw up in exhibit form. There is a schedule between Kansas City and Santa Fe points in New Mexico in Santa Fe I. C. C. 9016; there is one between Kansas City and points in Arizona, New Mexico and California in the same tariff; there is one in Santa Fe I. C. C. 9355 applying between Denver and points in Arizona, extending, I believe, as far as Phoenix, 1,029 miles. Those schedules are all less than the Shreveport scale, which itself is lower than the 12358 scale.

Exhibit 48 is a statement showing percentage of the beef cattle—horse and mule rates from points in New Mexico to Fort Worth. The horse and mule rates are combination rates, the beef cattle rates are through rates, and the effect of the differential rates published in I. C. C. 1735. I have used those differentials for the reason that I had not received from Agent Fonda the supplement carrying the higher differentials which Mr. Tanner explained, and in this exhibit I have therefore used a sum of 35 cents instead of 38 cents, which will further broaden the difference between the beef cattle and the horse and mule rates. Also, I find that under the percent under beef cattle I have figured the horse and [fol. 564] mule minimum as 23,000 and I should have used 22,000, which would further broaden the difference.

To explain the combination, the rate at present from Fort Worth to El Paso is 54 cents, which figures $124.20. The rate to El Paso is a per car rate and the two added together make the through rate. The beef cattle rate is 50 cent- per 100 pounds for the first 100 miles. The actual percentage there for the first item, 15 miles, is 138.8. By the addition of the differential of 35 cents, instead of 38 cents, the rate is $233.20 on a car of horses and mules, or 212 per cent of the beef cattle rate. The revenue is shown at 37 cents per car-mile or 3.21 cents per ton-mile.

In 1917 I put in three weeks in the Southern Pacific General Offices in Houston, and I figured the movement or performance of 3100 trains moving from Sanderson, Texas, in the extreme southwestern part of the State and in the heart of differential territory. Trains moving from that point to Denison, Texas, commencing January 2nd and taking seven days, and skipping 21 days and taking the next 7 days, using each fourth week, one result was to show that, while there was a slightly better movement, a little better time was made on livestock than on ordinary freight, it was slight.

I classified those 3100 trains in this manner: For first class I took trains of 25 or more cars of livestock; for second class I took trains with 10 to 24 cars of livestock; third class was less than 10 cars of livestock; and fourth class was dead freight trains. While the movement of the livestock was a little bit better, the fuel consumption ran this way: On first class they consumed 1494 gallons of oil per train over the division, or 12.57 per train mile; the second class trains [fol. 565] consumed 1644 gallons per train or 13.43 per train mile; the third class trains consumed 1364 gallons per train or 14.51 per train mile; the fourth class trains consumed 1206 gallons per train or 10 per train mile.

In No. 15686 I worked up practically the same information on 822 trains. They moved from Fort Worth to Kansas City, Katy, also Rock Island; the Rock Island from Amarillo and Dalhart and Herrington on into Chicago; the Texas & Pacific from Big Spring to Texarkana; Fort Worth & Denver; also, all of the trains a certain period, I have forgotten how many, between Omaha and Chicago, all of those trains in the southern part of the country and up through Kansas City to Chicago.

Mr. Andrews: I do not think the Examiner should allow that information to go in.

The Witness: Well, I won't say anything more about it.

Mr. Andrews: It seems to me that he should properly put the sheets in themselves so we will have an opportunity to cross examine, and I object to it on those grounds.

The Witness: In 1917 in I. & S. Docket 958 I described a copy of the Fort Worth & Denver and the Wichita Valley operating sheet. It showed a great deal of detailed information as to the operating expenses on those roads. Those expenses were allocated to freight and passenger and provided for in common-point and differential territories. At that time Childress, 115.5 miles south of Amarillo, was the old differential line under the Railroad Commission of Texas tariff, the differential tariff in 2-B. The Wichita Valley was wholly a differential tariff line under both tariffs. That operating sheet showed the operating expenses north of Childress for handling all freight was 4.61 cents per net ton-mile; that was in differential territory, and for common-point territory it was 5.17 cents.

[fol. 566] (Objection by Mr. Andrews sustained.)

The Witness: It has been testified here that the low level of rates in New Mexico had not been noticed until these proceedings were brought, and I want the record to show that I filed a very extensive set of exhibits in the original 12358 hearing that covered practically every rate in New Mexico; that was four years ago.

It was also testified by Mr. Beaman at Fort Worth that, while there were no specific differentials on horses and mules, the advances in the rates in that territory—I understood him to refer especially to southern Texas—took care of and was equal to a differential. I have run down the horse and mule rate in tariff I. C. C. 1570, commencing at Mineola, the common point. The 75-cent rates extend to Gould, 42 miles, where it is increased to 78.5 cents, or 3.5 cents. That 78 cents extends to McWhirter, 424 miles, and passes the Texas differential line some 30 miles, where it is increased at McWhirter to 81.5 cents, or 3 cents, as compared with an increase of 3.5 cents at the beginning, Mineola. The 81-cent rate extends on the I-G. N. 70 miles and to all stations on the Texas-Mexican Railroad. It is therefore quite evident that there is no regard for a differential line in that territory.

In New Mexico I have found a situation whereby the inauguration of a differential rate will probably shut Fort Worth out of New Mexico. At the present time we are paying a combination, although Denver, Kansas City, Wichita, and Oklahoma City have through rates which in themselves are now less than the Shreveport scale, and to interpose a differential upon us on top of the combination rates that we will have to pay will effectively shut us out and make it [fol. 567] impossible to reach into New Mexico unless we can pay the rate going around this differential territory, which can be done cheaper than going through it. For instance, take La Tuna, a Texas point 19 miles out of El Paso, and the result is that a rate to Trinidad in Santa Fe Tariff I. C. C. 1916 for 499.8 miles of $123.50 plus the Trinidad-Fort Worth rate of 589.1 miles of $141.45, per Southwestern Lines Tariff I. C. C. 1735, makes a through rate via Trinidad of $264.95 for 1,089 miles. If we were permitted to go straight through, we would have a rate to El Paso of $29.15 and of $225.40 from El Paso to Fort Worth with this differential added, a total of $254.55, which is $10.00 less than the combination on Trinidad. If we take

the next station north of La Tuna it will reduce the Trinidad combination and increase the El Paso combination, making the Trinidad route the cheaper, notwithstanding it is 1,089 miles via Trinidad and only 639 miles via El Paso.

Another thing to be considered is that in the western part of New Mexico with this differential we will meet the transcontinental rate of $299.00 to Fort Worth in group H. The original cause of complaint in No. 12358, so far as New Mexico and Arizona is concerned, has not been relieved in any particular by the Commission's decision in No. 12358, but has been greatly aggravated, or will be, by the interposition of the differential in western Texas through which we will have to go.

(Exhibits 46 to 48, witness Pelton, were duly received in evidence.)

[fol. 568] Cross-examination.

By Mr. Andrews:

The figures shown on Exhibit 46 are not in the same form as in the Railroad Commission report from which they were taken; those are the actual footings shown, except the footings and the averages. I did not take all the lines in Texas shown in that annual report. I took first the lines principally located in differential territory, which I selected without reference or consideration to what line I would use in common-point territory. I took all of the lines operating in differential territory except a few of the very short lines, but I believe I have practically all the lines in differential territory. I then tried as nearly as I could to match a common-point line of the same mileage and of the same class. I did that all the way through until the last, when I used practically all of the lines in common-point territory and reached approximately the same mileage that I had in differential territory. You will notice the absence of some of the big systems. I found I could not use that without having too much mileage; they were first-class roads, and in matching mileage I could not figure those; I could not say what effect their inclusion would have on this. As to whether I made any endeavor to take into consideration the traffic densities on those big lines in common-point territory, I did not consider them at all; when I found too much

mileage or that they would not match up I did not consider any of the figures on those lines. As to whether the purpose of this exhibit was not to show that the traffic density in differential territory compared favorably with the traffic density in common-point territory, it was to show the comparison of all the lines in differential territory. I did not consider that if I included all the lines from common-point territory of any high-class roads and of much greater mile-[fol. 569] age it would be a fair comparison. I did not consider the density of traffic or any other figure but only the mileage and the class in matching up with a road in the other territory. I know of the G., C. & S. F. Railroad in Texas, which I suppose quite likely has around 1500 miles. The reason I excluded that line was, I think, that there was no comparable line in differential territory and its inclusion would have given me entirely too much mileage in common-point territory.

I should not think that the figures in the last column on Exhibit 46 showing ton-miles of revenue freight include non-revenue traffic. The Railroad Commission says it was revenue freight and non-revenue freight could not properly be included in that. All I know is what the Railroad Commission of Texas figures show. As to what other line in Texas common-point territory I have left out of this exhibit, there is the M-K-T and the I-G. N., both of which are class I roads. The Texas and Pacific was omitted, but a large portion of it is in differential territory and the figures could not be allocated. There is also some of the Santa Fe in differential territory. The Frisco has not very much traffic in Texas. The Gulf Coast Lines would be more important than the Frisco. The T. & N. O. proper is in common-point territory, also the H. E. & W. T., but they are not very long lines. The Aransas Pass and the Rock Island are partly in differential territory and partly in common-point territory, though very little of the Aransas Pass is in differential territory. I can not answer whether the lines I excluded from this showing are lines of heavy traffic density, because I do not know, but the large lines are class I roads. The T. & N. O. is only about 350 miles and it may be second class, but I would have had to include some others [fol. 570] here if I had included those that were excluded, but I never matched up the figures between any two roads to see which one to put in and which one to put out. When

I got to the class III roads I had to take all there was to make the total mileage equal to the mileage I had in differential territory, around 1,000, and then I was a little short. I have three first-class roads, which about matches up, but it took eight second-class roads in common-point territory to equal the mileage of the six I used in differential territory. I would say the mileage I have used here is a very small percentage of the total rail mileage in Texas if you call around 15 per cent very small; I think the mileage I have used in either differential territory or common-point territory would about equal that.

Cross-examination.

By Mr. Thompson:

I arrived at the average operating ratio in comparing differential territory with common-point territory by taking the sum of the operating ratios for each territory and dividing that sum by the number of lines in the respective territories. I have shown a total mileage in differential territory of 1,929 and in common-point territory of 2,012, with four lines in common-point territory right together, the Bartlett Western with the operating ratio of 144, the B. N. & S. with an operating ratio of 295, the D. & P. S. with an operating ratio of 253, and the E. T. & G. with an operating ratio of 167, aggregating approximately 70 miles. By eliminating those four lines I would still have left a greater mileage in common-point territory than in 1,929 miles in differential territory, and it is obvious that by eliminating those four lines from common-point territory I would have a materially less average operating ratio in common-point territory than that shown. By taking out one or two lines I would get an entirely different figure, but on [fol. 571] the other hand I suspect if I had selected my lines I could have shown a still greater difference than here. I did not make any selection; if you want to cut out these high density lines, and throw your comparison in class I lines, and throw your mileage all out of line, you can get a different result anywhere. The Fort Worth & Denver is what might be called a trunk line, but I don't know what kind of traffic it handles, or whether there is a heavy tonnage of through traffic that moves between the Northwest and Texas over the State line.

A. E. BAZAN was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination (pro se):

I am Traffic Manager of the Chamber of Commerce at Wichita, Kans., and appear in this proceeding on behalf of the protestant horse and mule dealers located there, who are very much interested in the rates originally proposed by the carriers and also in the rates they are now proposing. They have very serious objections to any rates from Wichita to points in Texas differential territory here involved on a basis any higher than the 12358 scale because it is their opinion that the scale itself is a lot higher than it should be. There is also the outstanding fact that any increase in the rates on horses and mules at the present time, which is a time of depression in the industry, would have a very severe and far-reaching effect.

In connection with the proposal of respondents to publish the Shreveport class A differentials for distances traversed in differential territory, at no time have there been dif- [fol. 572] ferentials published on horses and mules either from, to, or between differential territory in Texas, nor have there been any differentials from, to, or between that territory on any class of livestock. Further, in prescribing rates on livestock, horses and mules, this Commission in two cases not so long ago prescribed the rates into Texas generally, allowing no specific arbitraries of any character for the haul in differential territory. I have reference to 89 I. C. C. 22, the Chamber of Commerce of Kansas City v. A. & W. Ry. Co., in which were prescribed rates on horses, mules, asses and burros, in carloads, from Kansas City to points in Texas and Louisiana.

Exam. Eshelman: Mr. Bazan, that cas- has been reopened and re-decided and the case consolidated with 12358.

The Witness: That is one of the contentions, Mr. Examiner. The Commission in this case prescribed a scale to Texas. In reopening and consolidating it with the 12358 case, the Commission did not differentiate between the order in the consolidated cases and this case. I contend that this scale applied to Texas generally, and I further contend the Commission had the same intention in the consolidated cases. I have not measured the relative scales, but the point I am making is that they prescribed that scale to

Louisiana and Texas from Kansas City, making no differentiation between common-point and differential territories.

Another case in which the Commission has set rates on livestock into Texas generally, rather than differentiating between common-point and differential territories, is 81 I. C. C. 482, wherein the rates on livestock in carloads were prescribed from Kansas City to Texas points; therein the northbound scale was prescribed, which is known as the [fol. 573] 2797 scale, revised Shreveport. I am not thoroughly familiar with this case, but it is my understanding that previous to the decision in the case I have just cited the Commission condemned the southbound rates to specific points in Texas and applied the general southwestern scale. The big point in this case is that increases are proposed and on a commodity wherein the period is the worst time that such a proposal could come about for the general good of all concerned.

It is my contention that the instant proceeding involves no rates to, from, or between points in New Mexico to any of the territory involved in Docket No. 12358, and in that connection it follows that all the evidence introduced in this hearing relative to the New Mexico situation has no standing, as we rely on the fact that the Commission will issue no order on rates not directly involved.

On April 18, 1925, the Commission issued its order in I. & S. Docket No. 2389, pursuant to numerous requests for suspension, and I will show the New Mexico rates are not in issue. The first suspension is Supplement No. 1 to C. R. I. & P. I. & C. No. C-11381, which names local and joint rates on commodities, in carloads, between stations in Kansas, New Mexico, and Oklahoma on the C. R. I. & P. and stations in New Mexico and Texas on the C. R. I. & P., C. R. I. & G., and E. P. & S. W. The face page of this tariff is reproduced in Supplement No. 1. On page 2 of Supplement No. 1 there is a distance scale of rates under the heading of horses and mules, against which in each and every instance the circle 1 appears, which tells us the following "applies only on intrastate traffic; for rates to apply on interstate traffic see Southwestern Lines Tariff No. 131."

[fol. 574] I now refer to page 16 of Southwestern Lines Tariff No. 131, I. C. C. 1735; that portion of Item 42 down to Note 1 specifically defines the territory from, to, and be-

tween which the various mileage scales of rates shown in Item 48 on page 17 applies. New Mexico applies in connection with rates between Colorado stations and stations in New Mexico on the C. & S., between station- in New Mexico on the C. & S. shown in Item 60 and Texas stations on the F. W. & D. C., also Oklahoma stations on the C., R. I. & P. and the St. L. S. F., from stations in New Mexico on the C. & S. shown in Item 60 to stations in Kansas, except to stations on the A. V. I., the C., B. & Q., and the St. J. & G. I., see Note 4, also to stations in Missouri. None of those notes or items have any particular construction on the description of the territory.

It is thus quite evident that both the Commission's order of suspension runs against Supplement No. 1 to C. R. I. & P. I. C. C. No. C-11381, and that all of the rates that this supplement carries are intrastate rates for application within New Mexico, thus leaving between New Mexico stations on the C. & S. and Kansas, Oklahoma, and Texas the 12358 scale. That is what is in effect to-day from the C. & S. stations in New Mexico, which were the only ones the Commission prescribed rates upon in the 12358 order, to the points in the other states. From the balance of New Mexico I have not checked all the individual tariffs and I do not know what has happened to them.

The next tariff dealt with in the Commission's order is Supplement Nos. 9 and 10 to Agent Fonda's I. C. C. 174. The title page of Supplements 9 and 10 shows that the tariff names local, joint, and proportional freight rates on classes and commodities, except cotton and cotton linters, applying [fol. 575] between Texas points named therein on local Texas traffic, also on interstate traffic, as provided in Item 300-A; also between Shreveport and points in Texas, also points in Arkansas and Louisiana, named on page 17 and points in Texas, also between points in Arkansas and points in Louisiana shown in Item 312. I have examined the two items just referred to and neither of them names a New Mexico point of origin or destination.

The next tariff is Supplement Nos. 45 and 47 to Agent B. T. Jones' I. C. C. 1509. It is a well known fact that B. T. Jones publishes rates between points in C. F. A. territory and from C. F. A. territory to points as far west as the Missouri River I know of no case where the rates have been published beyond that point by that agent.

The next tariff the Commission deals with is Supplement 29 to Agent F. A. Leland's I. C. C. 1570, which names rates from points in Texas to points on the Missouri River and Mississippi River and Chicago, but it does not name any New Mexico station either as a point of origin or destination.

Next is Supplements Nos. 87 and 88, to F. A. Leland's I. C. C. 1590. This publication and these supplements name rates on classes and commodities between points in Oklahoma and Texas, and they also do not name any New Mexico stations.

The next are Supplements 45 and 47 to Leland's I. C. C. 1674, what is known as Leland's Exception 1. It names exceptions applicable on traffic to, from, and between Texas points as specifically referred to in certain tariffs. It does not name any exceptions to any rates or to any stations in New Mexico.

Next is Supplement No. 13 to Leland's I. C. C. 1678, which names rates between Kansas and Oklahoma on [fol. 576] classes and commodities generally. That tariff names no rates nor carriers any rules or anything else applicable to traffic to, from, or between New Mexico stations. Next comes the suspension of Leland's I. C. C. 1735, which is the tariff purporting to be in compliance with the Commission's order. Specific reference is made to portions on page 13 of this tariff which are under suspension, the provisions shown in connection with El Paso and Lubbock on page 14 thereof, the provisions in connection with Pecos, Plainview, Slayton, Spur, Swenson, all Texas destinations, on page 17 thereof. Item 48, which is a scale itself, and the order states so far as applicable to, from, or between points named in Items 84 and 90 on pages 28 to 31 thereof. These pages list the points in Item 84 in the El Paso group and in Item 90 the Texas differential points with the specific differentials which the cariers have here stated they do not care to retain, also Items 84 and 90 on pages 29, 30, and 31; Item 90 and page 2 thereof, the concellation notice, insofar as it cancels schedules continued in effect by reason of this suspension. That last line goes back to the individual lines' issues as well as the agency-issued tariffs, which formerly carried the rates, such as were carried.

It thus can be seen that the New Mexico rates are not properly before us for consideration at this hearing, and I

raise the specific point on the record that the Commission should not pass on any rates to New Mexico in this proceeding for the reason that they are not in issue.

Cross-examination.

By Mr. Thompson:

So far as I know, the carriers published the 12358 scale correctly, although I have not checked it from Texas except as to differential territory. They published the Texas dif- [fol. 577] ferentials for the hauls to and from differential territory, and that is what is under suspension. As to whether there has been any material change in the rates on horses and mules in this territory during the last three years, to answer that correctly I would have to have some records; there has been a continual pounding at the class A rates and at the combination of the intermediate rates, which has broken down the through class rates and the Wichita and Texas point rates particularly, which, before the 12358 decision was quite generally on the combinations over intermediate points. I would say there have been quite a number of changes in the rates during the past five years; where there has been a movement they have all been reductions, because the combination of intermediates broke down the through class A rates. I do not concede that the present basis of rates, discarding the rates that have been published following the Commission's order in Docket 13358, are, generally speaking, lower than they were in 1922; the Wichita to Memphis rate was increased; the Wichita to New Orleans rate was increased. All we have in differential territory with the exception of the El Paso group, was the class A distance rates to the panhandle territory, as far south as Lubbock, I believe, and beyond. There we paid the Kansas City to Dallas-Fort Worth group —Dallas class A, which applies the Dallas-Fort Worth class A differentials to the points over as they were prescribed in the tariff.

Q. Well, has there been any material advance in the rates on horses and mules in this western territory we are talking about now, since 1921?

A. Mr. Thompson, if there had been any attempted advances, I am sure you would be quoting I. & S. proceedings here.

[fol. 578] Q. Then, your answer is there has been no advances?

A. Not to my knowledge, no, sir.

Cross-examination.

By Mr. Andrews:

It is my position in this case that the rates between differential territory and Wichita should be on the same relative level, mile for mile, as the rates between Wichita and Fort Worth. Since I have carefully reviewed the decision in No. 12358 and noted the rate of progression in that scale, I think I am more than justified in the statement that it should apply in Texas differential territory as well as in common-point territory. Going on the assumption that that is a reasonable scale, I see no reason why it should not be applied into and out of differential territory. I see no reason why a scale of mileage rates which applies be-[fol. 579] tween points in Texas common-point territory, or from and to Fort Worth and Oklahoma City and other points in the Southwest, should not be likewise applied to, from, and between points in Texas differential territory. It would not be correct to say it is my opinion that the rates in Kansas should be on the same level as the rates in New Mexico or Texas differential territory.

Cross-examination.

By Mr. Hamilton:

Assuming that my position is correct that the rates in Supplement 1 apply only intrastate and have no effect on the interstate rates, I suppose this Commission suspended the supplement and the rates upon a showing that they were discriminatory against and unduly prejudicial against interstate traffic. I do not assume the Commission had the power to suspend them, and not having heard of a parallel case I do not know whether they could suspend that class of rates anyway, but the Commission's order of suspension runs against them nevertheless and I can not place any different construction on its orders than the wording within the orders.

E. R. TANNER, Having been recalled as a witness for further cross-examination, testified further in substance as follows:

Cross-examination.

By Mr. Thompson:

As to whether I concur in Mr. Bazan's answer to your question in regard to there being no material increase in the rates on horses and mules in the territory here under consideration since 1921 and 1922, I do not think there has been any change one way or the other as a general proposition to or from differential territory since the last reduc- [fol. 580] tion went into effect, January 1, 1922; since that time there has been no change in the rates either up or down, the rates on horses and mules in this particular territory are approximately the same as they were in 1922 and 1923.

Cross-examination.

By Mr. Bazan:

As to whether I think the livestock industry can bear an increase in rates, generally speaking, from my own standpoint and from the standpoint of the communities of El Paso I would say they could not. They have gone through a very depressed period, as has been testified in the livestock cases for the Lord knows how long, and we have had bank failures in our community, and while I am not making any inference that the rates were to blame for it I would say that many factors entered into this depressed period. The depression has not ended, and as we all know the cotton crop in the El Paso Valley saved the day. I know that is true in differential territory as a whole.

Protestants rest.

(Whereupon at 6:05 o'clock P. M., May 19, 1925, the hearing in the above entitled matter was closed.)

[fol. 581] EXHIBIT HH

Before the Interstate Commerce Commission

Horse and Mule Rates in the Southwest, 1924

Docket No. 12358

TEXAS LIVESTOCK SHIPPERS PROTECTIVE LEAGUE et al., Complainants

vs.

DIRECTOR GENERAL, AS AGENT, ABILENE & SOUTHERN RAILWAY COMPANY, et al., Defendants

Docket No. 13619

ROSS BROTHERS HORSE AND MULE COMPANY et al., Complainants

vs.

UNION PACIFIC RAILROAD COMPANY et al., Defendants

Docket No. 13627

BURNETT-YOUNT HORSE AND MULE COMPANY et al., Complainants

vs.

ABILENE & SOUTHERN RAILWAY COMPANY et al., Defendants

Portions of Fourth Section Applications Nos. 461, 462, 621, 673 and 678

Fort Worth, Texas, May 6, 1925.

Before J. F. Eshelman, Attorney-Examiner.
Met pursuant to notice.

APPEARANCES

(Omitted, being included among appearances recited in 195 I. C. C. 417.)

Proceedings

Exam. Eshelman: The Interstate Commerce Commission has set for hearing at this time and place re-opened Docket

[fol. 582] Nos. 12358, 13627 and 13619, a part of the cases embraced in Horse & Mule Rates in the Southwest, 1924, 13 I. C. C. 479.

B. D. PELTON was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination (pro se):

The statements we will file in No. 12358 and allied cases on reparation have all been prepared by me or under my supervision, and the utmost care was taken to make them correct. I make that statement to supplement the testimony of the witnesses who will file the statements.

Cross-examination.

By Mr. Andrews:

The statements referred to are lists of the shipments on which reparation is claimed with sufficient information to identify the shipments. I do not show the rates assessed or the routes of movement, as Rule V takes care of that.

H. D. HENDERSON was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination.

By Mr. Pelton:

My residence is Fort Worth, Texas, where I have lived 20 years, and am Superintendent of the Fort Worth Stock Yards. In 1919 I was indirectly interested in the horse and mule business and handled 13 cars from northern points to Fort Worth, as listed in Exhibit A-85, and I paid the freight charges on the shipments therein listed.

(Exhibit A-85, witness Henderson, was duly received in evidence.)

Cross-examination.

By Mr. Andrews:

W. E. Berry was the owner of these shipments, which he made to himself at Fort Worth. He was not able to

[fol. 583] finance the shipments and I paid the freight and other charges on them, but was later reimbursed by him, and eventually he is the one who bore the freight charges. I have an assignment from him, and I am asking that reparation be awarded to me as his agent.

H. M. WHITE was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination.

By Mr. Pelton:

I live in Fort Worth and am bookkeeper for the Burnett-Yount Horse & Mule Company, which position I have held six years. I handle the accounts of customers of the Burnett-Yount Horse & Mule Company and pay the freight bills on shipments coming into Fort Worth consigned to Burnett-Yount, as well as on shipments from Fort Worth that are prepaid.

Exhibit A-86 is a list of shipments handled into and out of Fort Worth on which the freight charges were paid by me and charged to the different parties listed in the statement.

(Exhibit A-86, witness White, was duly received in evidence.)

Cross-examination.

By Mr. Andrews:

The parties listed in the column on the right-hand side of the sheets in Exhibit A-86 are those to whom we charged the freight charges and who are the claimants for reparation, as they are the ones who bore the freight charges as such. The Burnett-Yount Horse & Mule Company is not claiming reparation on its own behalf except as respects its own shipments, that is where that company appears in the list on the right-hand side. As to whether we have authority from the shippers to file complaints for them attacking these rates or to file a claim for reparation on the shipments listed here, we have not anything in writing, [fol. 584] but they have always authorized us to act for

them. At the present time we charge them 25 cents a car to pay the expenses of litigation we might have. That practice was begun on January 1, 1925.

W. O. ROMINGER was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination.

By Mr. Pelton:

I reside in Fort Worth, where I am in the horse and mule business; I have been in that business 25 or 30 years in partnership with my brother, C. O. Rominger. I was also interested at one time in the Stock Yards Horse & Mule Commission Company, a corporation, and was its President until it went out of business two or three years ago. Exhibit A-87 is a list of shipments received at Fort Worth by the firm of W. O. Rominger & Company. When the shipments reached Fort Worth and the railroad company presented the bill for the freight charges we gave a check to cover and retained the expense bills on the shipments as to which we are claiming reparation.

Exhibit A-88 is a list of shipments of horses and mules made by W. O. Rominger & Company from Fort Worth to Mississippi, where that firm has a horse and mule barn. The freight charges on the shipments listed in Exhibit A-88 were paid by W. O. Rominger & Company, as to which it was a partnership composed of W. O., C. O., and J. E. Rominger, the latter being a partner in the Vicksburg branch.

Exhibit A-89 is a list of the shipments of horses and mules on which the freight charges were paid by the Stock Yards Horse & Mule Commission Company. I know of my own knowledge that the Stock Yards Horse & Mule Commission [fol. 585] Company received the shipments listed on Exhibit A-89 and paid the freight charges thereon. The Commission Company then charged back to the owner all charges paid by it, including the freight, and then remitted the proceeds to the owner less the charge for commission, and I am asking for reparation on behalf of the owners.

(Exhibits A-87 to A-89, witness Rominger, were duly received in evidence.)

C. W. BEASLEY was thereon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination.

By Mr. Pelton:

I reside in Fort Worth, where I am and have been for a number of years employed as bookkeeper and cashier for the Fort Worth Horse & Mule Company, and in that capacity handle its books and accounts and pay all incoming bills, including freight charges. The Fort Worth Horse & Mule Company conducts a feed and commission business on horses and mules and also handles a few shipments for its own account. Exhibit A-90 is a list of the shipments of horses and mules on which the freight charges were paid by the Fort Worth Horse & Mule Company, such freight charges being charged back to the shippers listed therein, except where it was the individual business of the company, on which shipments it paid and bore the freight charges.

(Exhibit A-90, witness Beasley, was duly received in evidence.)

JOHN C. HICKS was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

[fol. 586] Direct examination.

By Mr. Pelton:

I reside in Fort Worth, Texas, where I am employed as Secretary-Treasurer of Ross Bros. Horse & Mule Company, a corporation, which position I have held since January 1, 1917. In that capacity I have full charge of the office and supervision over all receipts and disbursements. Ross Bros. Horse & Mule Company handles horses and mules on a commission basis and also for its own account. As to the commission business, when a party sends a car of horses and mules to us, we sell them and pay the freight and all expenses, thereupon rendering him an account sales and remitting him the net proceeds. Exhibit A-91 is a list of shipments of horses and mules on which charges were paid by Ross Bros. Horse & Mule Company.

(Exhibit A-91, witness Hicks, was duly received in evidence.)

Mr. Pelton: I now have the assignment mentioned in the testimony of Mr. H. D. Henderson, which I offer in evidence as Exhibit A-92.

(Exhibit A-92, witness Henderson, was duly received in evidence.)

Exam. Eshelman: The hearing is adjourned to the rooms of the Public Utilities Commission of Kansas, at Topeka, Kansas, for May 15, 1925.

(Thereupon, at 9:10 A. M., May 8, 1925, the hearing of this matter was adjourned until May 15, 1925, at Topeka, Kans.)

[fol. 587] Topeka, Kansas, May 15, 1925.

Before J. F. Eshelman, Examiner, and J. W. Greenleaf, W. C. Miller, Frank O'Brien, L. T. Hussey and Clarence Smith, Commissioners of the Public Service Commission of Kansas.

Met pursuant to adjournment.

APPEARANCES

(Omitted, being included among appearances recited in 195 I. C. C. 417.)

Proceedings

Exam. Eshelman: The Interstate Commerce Commission has assigned at this time and place for joint hearing with the Public Service Commission of Kansas a rehearing in Docket Nos. 12358, 13619 and 13627. These are the so-called Fort Worth cases embraced in Horse & Mule Rates in the Southwest, 1924, 93 I. C. C. 479, wherein the Commission prescribed a maximum scale of rates for application on horses and mules in the Southwest. Upon joint petition of the Public Service Commission of the State of Kansas and of the Chamber of Commerce of Kansas City, Missouri, the Commission has reopened these cases for rehearing on the question of the reasonableness of the scale of rates prescribed for application between Wichita, Kansas, and St.

Louis, St. Joseph and Kansas City, Missouri, on the one hand, and points in Kansas, southern Missouri and Colorado embraced in the territory defined in the report, on the other.

The Public Utilities Commission of the State of Kansas has assigned for hearing at this time and place its Docket No. 7036, In the Matter of Application of The Atchison, Topeka and Santa Fe Railway Company, for account of all Kansas lines, to publish increased rates applicable on horses and mules between all points in Kansas.

[fol. 588] FRANK A. SWEET was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination.

By Mr. Tedrow:

I live in Kansas City, and am and for about 35 years have been engaged in the horse and mule business, 18 of which were in the Kansas City market. There is a horse and mule market at Kansas City, which I consider is an important one. We receive horses and mules on consignment and do a commission business. I am familiar with the marketing of horses and mules at the Kansas City market. As to the condition of the horse and mule business at this time, the receipts have fallen off and the price has decreased, especially on horses. The receip-s here are very much reduced to-day from 10 years ago, and the price of horses -as been reduced to less than 50 percent; the price of mules has recovered somewhat from the low time. The horse and mule business is worse now than it was 10 years ago.

As to the importance of freight charges and freight rates in the marketing of horses and mules, that is taken into account by the purchaser when he purchases stock, and any additional expense would be a hardship on the shipper. If a man out at Salina, Kansas, say, shipped us a carload of horses and mules which we sold on the Kansas City market, he would receive what we get for them less the freight charges from Salina to Kansas City. The horses and mules we sell at Kansas City come principally from Kansas, Missouri, and Nebraska, a few from Colorado and South Dakota;

Kansas is a very important origin territory for our horses, our receipts from Kansas being much larger than the re-[fol. 589] ceipts from other states. After we sell them at Kansas City the horses peincipally go East and to the Southeast, to Louisiana points and a few to Texas. Most of the horses go East to such points as Chicago and east of the Indiana-Illinois State line, and the mules go to the South and Southeast, Memphis and the Mississippi Valley, and southeastern territory, and a good many go to Texas. As to whether in my opinion the horse and mule business can now stand an increase in freight rates, in the condition of the business at the present time I think any additional expense would be a hardship. An increase in the freight rates on horses and mules from Kansas points, Colorado points and southern Missouri points to Kansas City would tend to diminish the receipts of horses and mules both into and out of the market.

Exam. Eshelman: I should announce what I failed to at the beginning, that the Commission will permit evidence so far as it pertains to the issues in this case that might become allowable under the provisions of the Hoch-Smith Resolution.

Cross-examination.

By Mr. Andrews:

As to why an increase in the freight rates on horses and mules in this territory would tend to diminish the receipts at Kansas City, possibly the stock would not be shipped if the expenses were so exorbitant that they could not afford to ship them. As to whether that would be due to competitive conditions, I don't know. Of course, if the stock could be marketed at other markets cheaper than at Kansas City, that would be the condition; naturally, the shipper would market them where they could be marketed the cheapest. As to whether the same number of horses and mules would be consumed or used or purchased under increased freight rates, I don't know, I am speaking only of consignments to our market. So far as Kansas City is concerned, with increased rates they might leave them in the country, sell [fol. 590] them somewhere else or find some other way to market them.

As to why the horse and mule business is less than it was 10 years ago, the price has been bad and conditions have been bad in that line and breeding has not been continued. This falling-off started right after the War, and it has not been getting better in the last couple of years so far as horses are concerned. That falling-off is due to the use of tractors and autos and trucks. The price of mules has increased somewhat in the last few years, and there has not been anything like the falling-off in the mule receipts as there has been in the horse receipts. From the very low time to the present time I should think the price of mules has increased about 25 per cent. We come in competition in marketing horses and mules with Wichita, Omaha, St. Joseph, St. Louis, Fort Worth, Memphis, and Atlanta; as to New Orleans, very few of our receipts go there. As to the market competition we meet in Texas, aside from Fort Worth, we have customers who come from points in Texas to buy mules from us. A great many mules that are sold at Wichita and Fort Worth are in Kansas City territory, they draw from that territory the same as we do and if Wichita should have lower rates the mules naturally might be shipped to Wichita instead of Kansas City, and that would be true as to the other markets.

Cross-examination.

By Mr. Larimore:

My firm deals principally in mules; a quantity of which we get from Missouri. I am familiar with the section of Missouri around Lathrop and Plattsburg, but as to whether most of those mules go to the St. Louis market, I think we get our share; it might be a 50-50 proposition. I do not think that 90 per cent of the mules from the territory within 30 miles of Kansas City go to the St. Louis market; [fol. 591] I do not think the East St. Louis market controls the southern trade on mules. As to the points in southern Missouri from which we receive shipments of mules, we get some from Joplin and Lamar and from around Springfield. I am not able to give an estimate of our total receipts of mules for a year from stations in southern Missouri.

We are the only commission firm in Kansas City. The other dealers support the market and carry stock of mules in their barns and cater to the retail trade. We hold public auctions but the other companies do not. Taking the southern points, as to whether these mules we sell are at auction, some of them are retailed; if a shipper wants to sell his mules at retail we have no objection and we have salesmen there to assist. We are located in Kansas City, Missouri, not Kansas. At the present time less than 25 per cent of the horses and mules handled by us are horses. I should think 35 per cent of the mules we handle comes from Kansas, and possibly 20 per cent from Nebraska. We get some horses but very few mules from South Dakota. Possibly 10 per cent of our mules from Iowa. As to Missouri, we get some mules from the points just mentioned in the territory 40 miles out of Kansas City, also Chillicothe on to the east. Previous to this year, the mules from that mule-belt country known as Boone, Audrain, Monroe, Pike and Calloway, the principal mule territories in the state, have gone principally to the East St. Louis market, but this year we have received perhaps 10 loads from there. This year they went principally to Atlanta direct from Calloway County, not through East St. Louis. It is my opinion that the present unsatisfactory condition in the horse and mule business mentioned by me is due in a great measure to the production and use of automobile trucks and tractors.

[fol. 592] Cross-examination.

By Mr. Bazan:

As to my testimony that a lower rate on horses and mules from a certain point to a market other than Kansas City would influence the movement thereof to such other market, naturally the effect of a lower rate to Kansas City than to another market would tend to bring the shipments into Kansas City. That indicates to my mind that the charges on a carload of horses and mules is a factor in the movement.

A. M. Corp was thereupon called as a witness and, having been duly sworn, testified in substances as follows:

Direct examination (pro se):

I am appearing for the Kansas City Livestock Association. I have had approximately 13 years' railroad experience and have been six and one-half years with the Kansas Public Service Commission.

Exhibit B-93 is a statement showing the traffic density of class I roads in Kansas for the year ended December 31, 1923.

Exhibit B-94 is a statement showing the traffic density in South Dakota of class I roads for the year ended December 31, 1923.

Exhibit B-95 is a statement showing the traffic density in Texas for class I roads for the year ended December 31, 1923.

It will be noted that the density in Kansas for the state as a whole is considerably heavier than the density in either South Dakota or Texas. The figures are taken from the reports of the carriers to the Kansas, South Dakota and Texas State Commission. The showing in these exhibits is net ton miles.

Exhibit B-96 is a statement showing the density in the State of Nebraska as taken from the reports of the carriers to the Nebraska Commission. I have shown the [fol. 593] total density in the State of Nebraska including and excepting the Union Pacific. Item 1 in the exhibit should be headed Miles of Road Operated; Item 94 Revenue Ton Miles, and Item 125, Revenue Ton-Miles per Mile of Road, all being net ton miles. The exhibit is in support of the allegations in the petition that the existence of lower rates in Nebraska probably would affect whatever level of rates should be prescribed in this case for the northern section of the Southwest as that territory was defined in the report.

Exam. Eshelman: That is, it goes to the reasonableness of the rates which shall be applied in this northern section of the southwestern territory. I do not understand that the Commission would make an order with respect to undue prejudice to this section and preference to some other section as a result of this hearing.

Exhibit B-97 is a statement showing traffic density on the Union Pacific west of Kansas City for the year ended December 31, 1923. The purpose thereof is to show the

density of traffic on the line over which the traffic moves from western Kansas or eastern Colorado into Missouri or to the Mississippi River.

Exhibit B-98 is a statement showing traffic density on the Missouri Pacific for the Central Kansas Division and for the Colorado Division, which is that part of the Missouri Pacific west of Leeds, Missouri, to Pueblo, and shows the density on that section of the line over which the traffic would move to Wichita or to the Kansas City market.

Exhibit B-99 shows the density of traffic on the Rock Island by operating divisions for the Kansas, El Paso, Amarillo and Nebraska-Colorado Divisions. Traffic from [fol. 594] Colorado to the Missouri River would move on the Kansas-Colorado Division through the Kansas Division, where the traffic density is very heavy. On the main line of the Kansas Division we have a density of 3,456,000 ton miles. Traffic from southwestern Kansas to the Missouri River would move via the El Paso-Amarillo Division through the Kansas Division, and traffic to Wichita would move on the El Paso-Amarillo Division and the Kansas Division from the Southwest; from northwestern Kansas to Wichita it would move entirely via the Kansas Division. Page 2 of the Exhibit shows the territory of the divisions shown on page 1.

Exhibit B-100 shows the density of traffic on The Atchison, Topeka and Santa Fe Railway by operating divisions west of Kansas City. Traffic from Colorado or western Kansas, moves over the Colorado, Arkansas, Western, Middle and Eastern Divisions, where the traffic density is very heavy, and traffic from the South to Colorado would originate on the New Mexico Division and move on the other divisions shown. Page 2 shows the territory covered by divisions shown on page 1.

Exhibit B-101 shows the traffic density on the St. Louis-San Francisco Railway for that part of the Frisco in Kansas handling traffic from Kansas points into Wichita or from Kansas points into Kansas City. The average density for the Kansas City subdivision, the Afton-Parsons Division and the Wichita-Burrton Subdivision of the Frisco is 1,376,000 ton miles per mile of road.

Exhibit B-102 is a statement showing rates to Kansas City from Nebraska stations on the Missouri Pacific as compared with the present and proposed rates to Kansas City

from Kansas points for similar distances on the Santa Fe. [fol. 595] It will be noted that from Crete, Nebraska, to Kansas City, the per-car charge is $64.40 for a distance of 207 miles, while from Halstead, Kans., a point on the Santa Fe 206 miles from Kansas City, the per car charge is $67.10. From Stella, Neb., to Kansas City, the per-car charge is $49.45 for 123 miles, while from Emporia on the Santa Fe to Kansas City the per-car charge is $50.05. The car-mile earnings from the Nebraska points shown to Kansas City are 35 cents and from the Kansas points 34 cents. Under the proposed adjustment the charge from Halstead to Kansas City, 206 miles, would be advanced to $82.80, whereas Halstead now pays $2.70 more than from Crete, for the same distance. The increase in the Halstead rate to Kansas City would be 22 percent. From Emporia the charge would be increased from $50.05 to $62.10, or 24 per cent.

We have another situation shown on this exhibit. From Reserve, Kansas, a station just south of the Nebraska-Kansas State line the present charge is $37.00 per car and under the proposed basis the charge from Reserve would go to $55.20 for 95 miles, while for 123 miles from Stella, Neb., the first station on the Missouri Pacific north of the Nebraska-Kansas State line, to Kansas City the charge would be $49.45. Page 2 of the exhibit is a rough map showing the location of the Nebraska points shown on page 1; the Kansas points shown are intermediate between Atchison and the Nebraska-State line. That is the Missouri Pacific Railroad outlined on the map and the Missouri Pacific rates to Kansas City that are shown apply also to St. Joseph and Atchison, as is shown in the first column. We have added 31 miles to the St. Joseph column to equalize the mileage to St. Joseph and Kansas City, the same rate applying to both [fol. 596] points. When we get into the Kansas points, beginning at Reserve, there is a different rate named to Kansas City from that to St. Joseph, so we use the Kansas City mileage from the Kansas points. The present charge of $49.45 for 123 miles from Stella is less than the charge under the proposed scale would be for distances in Kansas 63 miles from Kansas City; in other words, we'd go down to Lancaster, Kans., before we would bo below the rate which applies from the Nebraska point and it would be exceeded at all intermediate points as far as Lancaster, which is 58 miles from Kansas City, or some 10 or 12 miles north of Atchison.

Exhibit B-103 shows the traffic density on the Omaha Division of the Missouri Pacific, which includes that part of the line and the stations shown on pages 1 and 2 of Exhibit B-102. The density on the Omaha Division of the Missouri Pacific is 1,591,000 ton miles. For the points shown in Kansas on the Santa Fe, which are located on the eastern and the middle divisions, the density is somewhat higher than that from the Nebraska points, the density on the Eastern Division being 1,930,000 ton-miles and on the Middle Division 1,653,000 ton-miles. While our rates are now approximately on the same basis as from Nebraska points, the proposed scale would increase the rates from Kansas points from 22 to 82 per cent.

Exhibit B-104 is a statement showing the rates on horses and mules, carloads, from Jansen, Neb., to Wichita, compared with the proposed scale from the intermediate points in Kansas on the C., R. I. & P. From Jansen the charges on a 36-ft. car are $63.25 for 267 miles, and from Mahaska, Kans., the first station south of the Nebraska-Kansas State line on the Rock Island, the proposed charge is $89.70 for [fol. 597] 246 miles. The Kansas adjustment under the proposed scale would be less than the rate from Jansen, Nebr., and the movement would be via McFarland, Kansas, 123 miles from Wichita. The rate from Waubansee to Wichita, 132 miles, produces a charge of $64.40, which is in excess of the charge from Jansen for 267 miles, while the traffic would move via the same line.

Exhibit B-105 is a statement showing rates from points on the C., B. & Q. in Missouri to Kansas City compared with the rates from points in Kansas on the Union Pacific to Kansas City for similar distances. From Ely, Missouri, to Kansas City for 202 miles the per-car charge is $68.44; from Brookville, on the Union Pacific, 201 miles from Kansas City, the charge is $67.10. From New Cambria, Missouri, 140 miles from Kansas City, the per-car charge is $53.36, and from Junction City, 140 miles from Kansas City on the Union Pacific, the per-car charge is $53.35. From Midville, Missouri, 110 miles from Kansas City, the per-car charge is $47.56, and from St. George, 112 miles, $50.05. The per-car revenue from the Missouri points shown to Kansas City is 41 cents, and from the Kansas points shown on the Union Pacific the car-mile earnings are 41 cents. This shows that the rates from the points in Kansas are practically the same as from Missouri for the same dis-

tances. Under the proposed basis the charge from Brookville would go to $82.80 against $68.44 for a similar haul in northern Missouri, and under the proposed basis the car-mile earnings from the Kansas points shown would be 55.6 cents, or an increase of 33 per cent.

Exhibih B-106 shows the traffic density on the Brookfield Division of the C., B. & Q., which is the division on which the towns shown in Exhibit B-105 are located. The density on the Brookfield Division of the C., B. & Q. is 2,860,000 [fol. 598] ton miles, and the density on the Union Pacific for the territory in which the points shown are located, is 2,008,000 ton miles per mile of road, between Kansas City and Junction City, and from Junction City to Ellis it is 1,100,000. That is on Exhibit B-97.

Exhibit B-106 also shows the traffic density on the Eastern and Middle Divisions of the Santa Fe, which is considerably higher than that on the C., B. & Q., Brookfield Division.

Exhibit B-107 is a statement showing the result of the application of the proposed scale from points on the Rock Island in Kansas to Wichita from Phillipsburg, Kansas. The present charge is $67.10 for a 36-ft. car, while under the proposed basis it will go to $108.10, an increase of 64 per cent. There would be increases from all points ranging from 15 to 84 per cent.

Exhibit B-108 is a statement showing the rates from Kansas points to Wichita, the proposed rates, the Nebraska scale, and the percentage of the proposed rates to the present rates. From Abilene, a point 100 miles from Wichita, the present charge is $47.30, and for a distance of 100 miles in Nebraska the rate is 17.5 cents. Under the proposed scale the rate from Abilene to Wichita would be 24 cents with a per-car charge of $55.20, an increase of 17 per cent. From White Water, Kansas, 22 miles from Wichita, the per-car charge under the proposed scale would be increased 116 per cent.

Exhibit B-109 is a statement showing the Kansas single-line scale, also the Nebraska intrastate scale, the South Dakota scale, the northern Nebraska and southern Nebraska, compared with the proposed scales, showing the percentage of increase of the proposed scale over the scales referred to. It will be noted that for distances up to 350 miles the Kansas and the Nebraska intrastate scales are on the same basis. Under the proposed scale the Kansas rate

[fol. 599] would be increased for 25 miles 52 per cent and for 300 miles it would be increased 24 per cent. The proposed scale is but 112 per cent of the South Dakota scale for 25 miles, while it is 152 per cent of the present Kansas scale. On a shipment moving to the market at Fort Scott, Kans., a distance of 25 miles, the per-car*ge* — under the present scale would be $36.80, while for a station in Nebraska 25 miles from Lincoln the charge would be $24.20.

Exhibit B-110 is a copy of the application of The Atchison, Topeka and Santa Fe Railway Company to the Public Service Commission of Kansas to publish the same basis of rates from Kansas points into Salina, Kansas, as are now published from Kansas points to Wichita and Hutchinson.

Exhibit B-111 is a copy of the order of the Kansas Commission approving the rates petitioned for. This would seem to show that the carriers are satisfied with the adjustment in Kansas.

Mr. Andrews: That is argumentative, Mr. Examiner, and Mr. Commissioners.

(Exhibits B-93 to B-111, witness Corp, were duly received in evidence.)

Cross-examination.

By Mr. Andrews:

With the exception of the K. C., M. & O., I believe Exhibit B-93 includes all the lines that operate in Kansas. As to Exhibit B-94, my request to the South Dakota Commission called for the information for all class I roads, and I believe they are all in there. As to Exhibit B-95, my request to the Texas Commission was for class I roads. As to the sixth column from the left-hand side of Exhibit B-102, reading to Kansas City plus 10 miles, the meaning of that is that the average distances from these Kansas points shown to St. [fol. 600] Joseph and Kansas City exceeded the Kansas City mileage by 10 miles, so I added 10 miles to the Kansas City distance to get the same average to Kansas City and St. Joseph, the same rate being shown to both destinations, the same as I used in the first column.

In that exhibit of distances I used the Santa Fe mileage from the Kansas points, the Missouri Pacific mileages from the Nebraska points, and the Missouri Pacific mileages

from the Kansas points on the Missouri Pacific. As to how I selected the points shown in the exhibit, no particular selection was made; I merely took points in Kansas where the distances were approximately the same as the distances from the Nebraska points. As to whether they are entirely representative of the rate situation in Kansas, I think that shows the situation in Kansas when compared with the rates from Nebraska points for similar distances. In Exhibit B-105 we first went to the points on the Burlington and then selected points in Kansas on the Union Pacific where the distance was approximately the same, just as was done with respect to Exhibit B-102. There was not any particular selection made in Exhibit B-107; we merely began on the Rock Island out toward the Kansas-Colorado border and came in toward Wichita.

The southern Nebraska scale shown in Exhibit B-108 is the scale prescribed by this Commission as applicable from southern Nebraska to the Missouri River, 89 I. C. C. 444. As to whether the single-line scales compared in Exhibit B-109 with the proposed rates are applicable on interstate traffic, the Kansas single-line scale is a state scale and so is the Nebraska single-line scale; the other scales shown are interstate scales. In my proposed rate, I used the single-[fol. 601] line rate under the rates established by the Commission in this case. From certain territories arbitraries are added to the single-line scales for joint-line hauls. With the exception of the scale shown in the second column, the Nebraska scale shown there takes an arbitrary of 5.5 cents for distances of 500 miles or less. In Kansas we have no arbitrary for joint-line hauls, we have a two-line scale. I do not know what is the South Dakota arbitrary for joint-line hauls. As to the northern Nebraska scale that would be the same arbitrary as quoted here, 3.5 cents. The joint-line scale in Kansas is not made by the addition of an arbitrary over a single-line scale; it is higher than the scale I have shown. The weights shown on the exhibit of 23,500 on the South Dakota scale and 23,000 pounds on the Nebraska scale are the minima for 36-ft. cars. As to what is the maximum under the Kansas scale, our Kansas scale is named in dollars and cents per car and on a 36-ft. car the charge is 110 percent of the standard car; there is no minimum named in connection with the per-car charge under which they could load any weight it is possible to get in the car.

Cross-examination.

By Mr. Larimore:

As to whether in Exhibits B-98, B-99, B-100 and B-101, which have to do with the density of traffic, I selected those divisions over which there is a great deal of overhead through traffic, there is that overhead traffic in there. No, I have not selected the divisions of the various carriers over which the transcontinental tonnage moves; in Exhibit B-101, I have the Wichita-Burton Division on the Frisco, which includes that end of the Frisco going up through Wichita to Ellsworth. I did not include in Exhibit B-98 the Wichita Division on the Missouri Pacific but I did include the Division from Hoisington to Pueblo, the transcontinen-[fol. 602] tal line. The Omaha Division is one of the heaviest divisions in the matter of traffic density on the system, though it is not the heaviest. The Arkansas Division is considerably heavier than the Omaha Division.

I took the transcontinental route in my exhibit showing traffic density on the Rock Island, but traffic from Colorado and western Kansas would nevertheless move over those divisions, and the traffic moving from that territory would certainly be entitled to the benefit of the heavy density. As to the Santa Fe, I took both west from Newton and south from Newton through Wichita, both lines handling transcontinental traffic, of course, but it covered the entire Santa Fe in that territory. The Santa Fe south from Wichita handles the big Texas traffic, but I did not select it. It was merely in the territory and I took it. As to whether these traffic density exhibits have principally to do with main-line traffic, I have included the branch lines, but of course the traffic from western Kansas or from Colorado would not move over the branch lines. Page 2 of Exhibit B-99 is one example and Exhibit B-100 also includes branch lines as well as main lines.

With respect to Exhibit B-102, where I show in the first column St. Joseph mileage plus 31 miles, that is the average mileage from the points shown to Kansas City and St. Joseph via the Missouri Pacific. There may be some little difference in there, but that 31 miles is commonly considered as being the figure to use in arriving at the mileages from Nebraska points into St. Joseph. As to whether it would be 55 instead of 31 miles to Kansas City over St.

Joseph, if I took the actual mileage I would have to figure that out. We took the St. Joseph mileage; it has added in the mileage from Atchison over St. Joseph, and added 31 [fol. 603] miles. If you were moving from there to Kansas City you would deduct the mileage from Atchison over St. Joseph, and I do not think the different would be 55 miles. It is approximately 47 miles, I think, from Atchison to Kansas City. The comparisons on the exhibit are mostly from Nebraska and Missouri, but we have a comparison of the South Dakota scale. As to whether as a traffic expert I consider those Nebraska and South Dakota rates low or high, I have never made any study of those rates. They have been set by the Interstate Commerce Commission and are presumed to be reasonable rates. I am not qualified to answer the question as a rate expert, for the reason I have not made any study of the adjustment. I don't know whether those rates are or are not about the lowest rates on livestock in the United States. Our exhibits here are simply made for the purpose of showing the comparisons between the proposed rates and those scales in Nebraska and South Dakota found reasonable by the Commission.

Cross-examination.

By Mr. Bazan:

As to the inclusion of transcontinental overhead traffic in my density figures it would not be possible to make any sort of comparison of all of Kansas versus Nebraska without including those lines in the State; they are essentially transcontinental lines so far as transcontinental traffic is concerned.

Robert A. Nash was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination.

By Mr. Fitzpatrick:

My residence is St. Joseph, Mo., and I am connnected with the St. Joseph Horse and Mule Company, a subsidiary of the St. Joseph Stockyards Company, a corporation [fol. 604] organized under the laws of Missouri. There

is a horse and mule market at St. Joseph, and I buy and sell horses and mules and also handle them on a commission. I have been in the horse and mule business since 1910. I buy horses and mules in the country around Nebraska and Kansas, northern Missouri and Iowa, and in 1910, 1911, and 1912 I was buying in practically the same territory. We had some shipments of range stock from the Dakotas and Montana and Colorado. There is a great decrease to-day in the number of horses and mules handled at the St. Joseph market as compared with the number handled there in 1910; it has amounted to about 80 per cent in the last seven years. The State of Kansas is an important factor in supplying horses and mules to the St. Joseph market. I attribute the falling off of business in horses and mules since 1910 to the use of automobiles, tractors, and trucks for one thing, and I suspect agricultural conditions in the South has something to do with it.

Since 1910 there has been a big decrease in the prices of horses and mules. In 1910 we shipped horses to the East, and at that time eastern chunks would sell from $165.00 to $225.00, and the same class of horses can be bought to-day at from $75.00 to $150.00. Only a few weeks ago I sold some horses for the Stockyards Company at $160.00 a head, since which time I have replaced them at lower prices, one horse at $150.00 and the balance from $110.00 to $130.00. Horses have declined in price a great deal more than mules. In 1910, 1911, and 1912 we shipped horses and mules to the southern markets, also to the East and the Southeast, to Boston, New York and Philadelphia. At that time we shipped as high as four or five loads a week by express. There are no horses and mules in the St. Joseph territory going to that market now, and none by express. We had [fol. 605] one car in 1923, which was the last we had. We now ship to Memphis, Fort Worth, Atlanta, and some other points through the South, mostly mules. We haven't had any shipments of horses lately, although there are occasionally a few horses put in the car with the mules on special orders.

I am aware of the proposed increase in the rates on horses and mules from Kansas to the St. Joseph market, and have familiarized myself with the amount of the advances so proposed, which run from $15.00 to $40.00 a car. We usually get from 22 to 24 head of horses and mules in

a car. The shipper pays the freight on horses and mules shipped to the St. Joseph market; they are paid by the raiser if he ships them himself. When I buy the stock for my company out in the country, that is, when they are not handled on commission, we pay the freight, although we aim to take it off the shipper when we buy the horses and mules; in other words, the prices we pay the raiser reflect the St. Joseph market less the freight into St. Joseph. The freight rate is an important factor in determining what the raiser gets for his horses and mules. I have known of instances in the past where part of a car of horses and mules have failed to sell on the market for their proportion of the freight charges assessed on the car. On several occasions there have been horses shipped in a carload where they would bring $2.50, some of them $4.00, and some of them $6.00, while the freight per head was more than the amount they brought on the market. That is what is known on the market as a plug horse. I would not say that happens frequently, but it does occasionally happen. The animal was alive but I have known of them being blind; there is not so much service left in them, they would be thin or something would be wrong with them, some unsoundness. [fol. 606] Range horses will run to-day all the way from $7.50 up to around $45.00. Horses and mules can not stand an advance in freight at this time.

Exhibit B-112 is a statement showing the steady decrease in the receipts of horses and mules by the St. Joseph Horse and Mule Company since 1910. That appears in the upper portion of the exhibit, and the lower half of the sheet contains a statement showing the steady decline in prices of horses and mules. Prices shown are average prices for the month of January each year, taken from the books of the St. Joseph Horse and Mule Company. I selected the month of January each year because I considered that about the best month in the year in the way of receipts and prices. The exhibit shows, for example, that in 1919, the receipts amounted to 5,951 horses and 5,046 mules, whereas in 1924 it was 136 horses and 2,046 mules. In 1919 the average price of horses was $110.00 and of mules $208.00, whereas in 1925 horses was $45.00 and mules were $116.00.

(Exhibit B-112, Witness Nash, was duly received in evidence.)

Cross-examination.

By Mr. Andrews:

A very small percentage of the horses shown on Exhibit 112 as having been received at St. Joseph were plugs; of the 136 horses received there in 1924, probably 15 or 20 head were plugs. In 1924, the lowest price we had for horses would probably be $5.00, and the highest price would be approximately $150.00. We did not handle any polo ponies or race horses or anything of that character, but if anything the polo pony is more valuable, I think, than it was several years ago. I don't know anything about the prices of race horses; we handle only a few polo ponies, and [fol. 607] they are questionable when a man buys a polo pony. My company is the only company in St. Joseph that handles horses and mules. As to what interest I have in this case in view of my statement that the shipper or producer pays the freight rate, when they increase the freight rate it has a tendency to keep the shipper from being in the horse and mule business; they kick on the freight rates at the present time.

I would be affected if the rates to St. Joseph were increased and the rates to Kansas City were left where they are, as they would naturally ship to the place where they could ship their horses the cheapest. I mean to say there is competition between the markets in the handling of horses and mules, and a lower level of rates to Kansas City would influence the movement to that point. The prices of the animals are close together at the river markets, and if a man had a cheaper rate to Kansas City than to St. Joseph he would naturally ship to Kansas City. I think the level of the rates would influence the shipments to Wichita, especially as to Kansas, and I think the same thing would be true about St. Louis and the other markets involved in this case. The chunk horses I spoke about weigh from 1300 to 1500. They are not heavy draft horses; they are in a class below the draft horses. During the period covered by Exhibit B-112, the price of a draft horse would run around $200.00 to $225.00. The price of that class of horses has not diminished as much as it has on the others; I would say about $25.00 a head. Very few of those draft horses are handled on the St. Joseph market; I do not know what they handle at St. Louis or Kansas City.

Cross-examination.

By Mr. Larimore:

Before I introduced my exhibit I stated that the decline [fol. 608] in prices began about 1911. The reason I only went back to 1918 in my exhibit is that the horse and mule company began doing business in 1916 and the records were not available before that. My firm is the only market at St. Joseph that holds weekly auctions, but they have private sales barns. There is no daily report issued by the St. Joseph market that I know of as to the prices of horses and mules, although I believe they have a market quotation in the St. Joseph newspaper, but it is marked the St. Louis horse and mule market. When we were handling a lot of horses at St. Joseph, I would say that at least 40 per cent of them were chunks. At the present time it is about 20 per cent, and the other 80 per cent consist of a few draft horses and some plugs and southern horses. A chunk is a chunk, no matter how old he is; over a certain age he would be a pluggy chunk; it is the shape and size that makes him a chunk and not his age. A horse would have to be pretty old to become unmarketable.

At present prices a high-class chunk would bring $135.00 to $140.00, and an average chunk about $75.00 to $100.00. We have handled hardly any draft horses during the last two years; outside of chunks the class of stock we are now handling would be plugs mostly and common work horses. In fixing the average price of $40.00 as of January, 1925, I included a few chunks in there. As to what pulled down that average price of horses with a good chunk worth $145.00 to $100.00 there were a good many in there we would price around $75.00, work horses. Chunks are commercial horses, but in the language of the horse men they are called work horses. We sell the work horses at auction and the chunk horses the same way; some of them are sold at private sale. Mules are sold at auction, and draft horses [fol. 609] as well. I know of a farmer in Kansas who has shipped a carload of horses to St. Joseph in the last 12 months; his name is Frank Meek, Kensington. I think he is a farmer and also a dealer. As to whether there were any others, there is C. H. Williams, who lives at Onida. I think he is a farmer and a dealer but I don't know whether he lives in town; that is where he ships from. We ship some

mules on orders to Atlanta, and then there is an occasional order to other places, such as Portland, Ark., and Opelousas.

Cross-examination.

By Mr. Andrews:

The higher classes of horses, such as draft animals, are shipped to market, but not to western markets so much. There is not as large a percentage of those sold that are shipped to market as there is of these chunks and cheaper grades of horses; they are sold to some buyer that would be shipping to eastern points, Galesburg, for instance.

Cross-examination.

By Mr. Pelton:

As to whether the fact that the horse receipts shown in Exhibit B-112 decreased during the period covered from 5,951 to 136, or over 500 per cent, and the mules from 5,046 to 2,046, approximately 60 per cent, would go greatly to disprove the theory that the increased use of tractors has a material bearing on the present conditions of the horse and mule business, it might, but I think the tractor has had its effect on the horse and mule business. There are points in the South, of course, where they say they can not use a tractor to any advantage, and that is where the principal mule market is, but the trucks are being used so much in the East, in what is called the horse markets in the East. I do not think the fact that the price of draft horses has not decreased as much as in the case of other horses also [fol. 610] tends to disprove the theory of the tractor. The fact that they are not using so many of the draft horses as they used to is that there are not nearly as many raised as there used to be; if they raise as many as they used to the price would decline on those too. If the tractors have made inroads on the use of horses, that would depress the price, but the price has held up.

Redirect examination.

By Mr. Fitzpatrick:

The inroads made by automobiles and trucks is greater in many places. The only reason I could give for the re-

duction from 5,951 to 136 on horses is the fact that the southern people have quit using them; they have quit raising so many because of the lack of market.

Recross-examination.

By Mr. Tedrow:

A chunk is an eastern horse, a commercial horse, one that will weight from 1200 to 1500 pounds; after it gets above that it is in the draft class. It is 15 hands high and is used mainly in the East. That applies to any horse of about those dimensions, regardless of breed or antecedents or the like, if he is that shape and quality. A work horse is just a common horse, one that has not a lot of quality, might be ill shaped; he would weigh around 1250 or maybe 1300 pounds, but with a long body and no shape or class. A chunk is short and well formed. They do not ship those work horses east. The work horse is not the same as what I call a drafter, but a drafter is a work horse. The draft horse is a big horse, 1500 to 1700. The term drafter does not express what I term a work horse.

Recross-examination.

By Mr. Lysle:

I am interested in the rate from Kansas points to Wichita or St. Louis; if the rates were lower to those other com- [fol. 611] peting markets, it would be harder for us to draw shipments in on consignment, which would militate very much against the number of horses we could draw to the market and thereby directly affect the size of the market at St. Joseph.

Examination.

By Commissioners Hussey and Greenleaf:

I am not familiar with the agricultural conditions in the eastern two-thirds of Kansas, but I have heard it said that farmers are pretty generally discarding tractors and going back to horses. We have a classification called southern horses, which are small, 900 to 1100 pounds, on the breedy type. They are cheaper than the chunks but are serviceable work horses. They now range in price from $30.00 to

$60.00, and they constitute a relatively important part of our consignments, and that would help to bring this figure down to $45.00. That $45.00 average includes all horses sold, as taken from our books, but just for the month of January. I am not familiar with the economic condition of the men who are producing these horses. The freight paid is one of the factors that determines what the producer receives for his horses, and I think an increase in the freight rates would have a tendency to restrict the traffic in horses. I think there has been an increase in the freight rate in some instances since 1919, and a decrease in the price of horses. The fact that there has been an increase in the freight and a material decrease in the price might tend to restrict the traffic, and that could account for part of the lessened receipts. It would cost $10.00 to market a horse in St. Joseph in carloads from a distance, say, 100 miles out in the country, including the cost of buying, transporting, feeding and selling. Horses are ordinarily marketable when four years old, so if it cost $10.00 to market him and [fol. 612] he had to be raised until he was four years old, and his mother had to be kept a year, that $35.00 would represent the keeping of a horse five years and the breaking of him.

Recross-examination.

By Mr. Larimore:

With regard to my statement as to an increase in the freight rates on horses operating as a restriction of the traffic and thereby lessening the supply at the market, my exhibit shows we had 2,263 horses in 1921 and 136 horses in 1924, and assuming there has been no increase since 1921 I could not ascribe that falling off to increased freight rates in that period, but the freight rates might be one factor that has tended to decrease the movement.

Redirect examination.

By Mr. Fitzpatrick:

If it is later proven that there has been an advance of from $15.00 to $30.00 a car since June 24, 1918, I think that advance in freight rates has affected the supply of horses and mules coming to the market.

M. C. LYSLE was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination (pro se):

I am Assistant Commissioner of the Memphis (Tenn.) Freight Bureau. My statement is on behalf of the horse and mule dealers of Memphis. When this proceeding was instituted it was not the understanding of Memphis that it would bring about or merge into a general revision of rates in the entire southwestern territory, which explains the absence of our appearance in this case, but we are vitally interested in the reopened case and for that reason filed our petition of intervention. Primarily, it is our belief that the scale prescribed in Docket No. 12358, considering the [fol. 613] present conditions of the horse and mule industry, as I have been informed, is really higher than what our shippers feel the rates should be in this territory, from which they are drawing most of their consignments.

Mr. Larimore: If his testimony is going to any reasonableness of the rates to Memphis from the origin territory involved, we desire to object because this proceeding is not reopened as to the Memphis rates.

Exam. Eshelman: I think the fact of the matter is not that the Commission has declined to reopen as to that but that we were never asked to reopen as to that. However, I take it that Memphis has an interest in the rates which its competing markets have, and to the extent that his testimony goes to their position with respect to the rates that are here in issue it will be received. The position of Memphis with respect to the scale of rates that is in up here, or which might be put in up here, might be of interest to us.

Mr. Larimore: Absolutely. I have no objection to any testimony having to do with any rates that might be put in in the territory covered by the complaint as reopened.

Exam. Eshelman: You may proceed. However, it may be understood on the record that the testimony should be limited to the issues that we have before us.

Mr. Larimore: Are you able to state on the record whether you are intervening in behalf of the petitioners or otherwise?

The Witness: We want the same basis of rates to Memphis as are provided to these other competing markets, Wichita, St. Louis, Kansas City, and St. Joseph.

Mr. Larimore: Then, if the present basis of rates to [fol. 614] Memphis continues you are not intervening in behalf of the petitioners in this case?

The Witness: If the present basis of rates were maintained we would naturally argue for the same basis of rates to other competing points, yes sir, if that is what you are referring to.

Mr. Larimore: Your position then, as I understand it, is that if the same basis of rates is not put into the destination territory involved as is now in effect to Memphis there may thereafter be reductions in the Memphis end of this case.

The Witness: Yes, we want them to have the same basis we have.

Mr. Larimore: Your testimony here is designed to have the effect of forcing a reopening of this case as to the rates to Memphis.

Exam. Eshelman: The order of the Commission is specific as far as I am concerned, as to how much weight this case should be given and for what purpose it is received.

The Witness: Exhibit B-113 is to show primarily a comparison of the Docket No. 12358 scale, which has been prescribel for general application except in so far as this case has been reopened, and which is the basis for the rates provided to Memphis, effective April 20, 1900 [1925], and generally speaking in the entire southwestern territory. With mighty few exceptions, we find the rates under that scale are substantially higher than those in effect under the scales in the various territories as indicated. We take the position that to burden Memphis with the 12358 scale while maintaining a lower basis at the same time to competing markets would result in undue and unjust discrimination against Memphis and its dealers in horses and mules and would naturally affect us most disadvantageously.

[fol. 615] Exhibit B-114 is to show the present rates to Memphis under this 12358 scale, effective April 20, 1925, as compared to the present rate to St. Louis and Kansas City from the same points in Missouri and Kansas, and the rates that would result to both St. Louis and Kansas

City under the 12358 scale. It will be noted that the distances to Memphis there indicated are in fact not the distances to Memphis but to Bridge Junction, that for the reason that Southwestern Lines Tariff No. 131, Lelands I. C. C. 1735, now provides for the construction of rates to Memphis by use of the scale to the west bank point, which as to Memphis is to Bridge Junction, Ark., plus an arbitrary of 3 cents per 100 pounds, which is assumed to be for bridge toll.

In answer to the question asked me, I do not understand the Commission's order in No. 12358 specified any basis for making rates to Memphis or that its order directly affected Memphis, except under the general procedure the carriers have followed in publishing rates to Memphis when 9702 territory is involved.

Returning to Exhibit 114, I direct particular attention to one or two typical situations to show the effect of the present adjustment to Memphis versus the present adjustment to St. Louis and Kansas City. From Weaubleau, Mo., to Memphis the rates in effect prior to the 12358 revision was $97.00 a car for a distance of 341 miles. Effective April 20, 1925, the rate has been increased under the 12358 revision to $117.30 a car. Compare that charge for a distance of 341 miles with the present rate of $67.85 from West Plains, Mo., to St. Louis, a distance of 345 miles.

Compare the rate from Marshfield to Memphis, 306 miles, which formerly was $98.50 and is now $112.70 under the 12358 scale, with the rate from Mountain Grove, Mo., to St. [fol. 616] Louis, 308 miles, for which the charge at the present time is $64.40 or approximately half of what the charge is to Memphis under the 12358 scale, whereas under the 12358 scale that would of course naturally align the St. Louis rate comparable with Memphis, or a rate of $105.80. For a comparable distance from West Plains to Kansas City of 303 miles the rate is $64.40 as compared with $112.70 under Docket No. 12358 to Memphis. For a haul from West Plains to Memphis, 167 miles, the rate under Docket No. 12358 is $80.50, whereas the average rate from all the Missouri and Kansas points shown to Kansas City, a distance of 185.6 miles, or in round figures about 18 miles further to Kansas City, the charge is $52.64.

Exhibit B-115 covers the same situation and I won't burden the record with any explanation thereof, as it hardly needs to be enlarged upon. As to the rate of $107.00 a car

I have shown from Kansas City to Memphis, that is my understanding of what the rate is via the Missouri Pacific, but I understand there is a rate from Kansas City to Memphis via the Frisco of $98.50. It is my further understanding that in Docket No. 12358, 93 I. C. C. 491, the tabulation shows the distance from Kansas City to Memphis is 484 miles. It is our understanding that the short single-line distance from Kansas City to Memphis is 472 miles. They show the present rate of $98.50, except that westbound, via the Illinois Central as delivering carrier, it is $91.50 on horses from Memphis to Kansas City, as carried in Boyd's 167-D.

In Memphis we do not claim to be a leading livestock market, not by any means, but our dealers there are trying to build up a business in competition with the larger and possibly more keener competing markets here near the territory in which the horses are raised, and we have at our [fol. 617] doors, east and west and southeast of Memphis, a natural consuming territory for horses and mules. We feel there is every reason why the rate adjustment to Memphis should be on a basis whereby they can draw these animals into Memphis for sale and distribution to this general consuming territory mentioned. As a matter of fact, our horse and mule dealers have advised two of our members that they would in many instances prefer to buy near home, so to speak, because of the service they can get, and they feel that they will get the animals at destination in better condition and get them quicker than drawing them from the more distant markets.

The physical facilities at Memphis for handling this stock, chutes, etc., cover approximately 12 acres, and I understand they have a capacity of between 4,000 and 5,000 animals. They conduct their business, so I understand, on a general plan that is conducted in the various other livestock markets, that is to say, by means of auctions in disposing of their animals. The dealers there feel sure that unless advantage is given to Memphis of the same relative basis of rates that is put in from the origin territory of this stock to the competing livestock markets they will be absolutely shut out of business, and the facilities they have there, which are really necessary to serve that territory in and about Memphis, would be of little avail and, as far as their use for livestock purposes is concerned, might as well be junked.

In making that statement, I wish to say that the dealers in the Memphis market draw their shipments on consignment from the territory here involved, and that the freight charges are borne by the shipper and, as the previous witness testified, the shipper is very much interested in the quantum of charges which he has to absorb out of the net [fol. 618] selling price of those animals in making delivery or sale of his stock. Therefore, if a rate barrier is raised against the Memphis market it is only natural that it will discourage almost completely the shipment of livestock to Memphis.

(Exhibits B-113 to B-115, Witness Lysle, were duly received in evidence.)

Cross-examination:

By Mr. Tedrow:

As to whether the Kansas points shown in Exhibits B-114 and B-115 are in the southeastern part of Kansas with the exception of Kansas City, and the through rates we have to Memphis are from points in the southeastern part of Kansas, those are actual points from which horses have actually been drawn. They were phoned to me the day before I left Memphis. However, Altamont, Fort Scott, Columbus, and Lyons, are not in the southeastern part of Kansas. If my geography is correct Lyons is approximately in the central portion of Kansas. From points west of these points, I should say that prior to this case there were no through rates to Memphis in effect and the rates were generally combinations either on Kansas City or on these points in southeastern Kansas. The rate of $123.00 on Exhibit B-114 from Lyons, Kans., is a through rate. As to whether the effect of the prescribed scale was to bring about general reductions in horses to Memphis from points in Kansas where there were no through rates, I have not made a check of that, but doubtless some reductions would be made where the rates were on a combination basis It is my best thought that the combination, considering these low rates to the Missouri River primary markets, would be less than the 12358 scale.

As to how Memphis is going to be discriminated against by the scale applied to Memphis with some other basis [fol. 619] applying to the Missouri River markets, it is

for the simple reason that for all competing markets, whether as to horses and mules or any other articles of commerce, the primary matter for consideration, one market versus another, is the question of a relative level of rates rather than the measure of the rate itself. Competition is the controlling factor; the first consideration goes to the relationship of rates, but with due regard to the level or the quantum of the rate. As to whether that gets me to the proposition that all markets should be on one mileage scale, I would answer that all markets as to which from a given territory the transportation and competitive conditions are relatively the same should have the same relative basis of rates. As to whether I would agree to the proposition that Kansas City, going into the Southeast, should also pay the southeastern mileage scale on horses that applies from Memphis into the Southeast, I do not believe that is involved in this proceeding and do not care to express any opinion. I would have to talk to our horse and mule dealers to see what their position would be. As to whether I advocate the proposition that all rates should be based strictly on mileage without regard to any other considerations, market conditions, necessity for certain rates, competitive conditions, I have no authority to digress from the standard which has been established by Mr. Davant or take any other position, but there should be a general relative relationship of rates and the thought is that the mileage scale is one means of serving the situation to remove the possibility of undue discrimination.

When I ascertained from our horse dealers the points in Kansas from which they drew horses, I did not ask them as to any particulars, and as to what period of time that [fol. 620] covered or what is the relative volume of the movement from any particular point, I could not say. As to whether these eight points were all they gave me from Kansas, we had about five or six Santa Fe points, but as we do not have the Santa Fe livestock tariffs on file in our office and I could not check them out I omitted them, and the same thing was true of the Union Pacific and Missouri-Kansas-Texas points, as I recall. I asked our dealers to get me the figures as to how many cars of horses or how many head of horses Memphis drew out of Kansas last year, but unfortunately I did not get the information and could not wait for it. I show on Exhibit 115 that under this scale the proposed rate from Kansas City to

Memphis will be $133.40, and the going rate from Kansas City to Memphis via the Frisco was $98.50, making an increase of $34.90 in the rate from Kansas City to Memphis. Taking Independence, Kans., the present rate to Kansas City is $55.50, and adding that to the former rate of $98.50 from Kansas City to Memphis makes a combination rate of $154.00, so that the former rate of $107.00 from Independence direct to Memphis made a difference of $47.00 in favor of the movement direct to Memphis. Under the scale in this case the rate from Independence, to Kansas City would be $73.60 and from Kansas City to Memphis $133.40, making a total through charge when marketed at Kansas City of $207.00, and the scale rate from Independence to Memphis that is now in effect is $132.25, or a difference of $74.75 in favor of the direct movement to Memphis as against the former difference of $47.00. As to whether our situation has radically improved in that connection, I would say that irrespective of that, Memphis is entitled to the benefits of its position with relation to the nature of the shipment; that is to say, any benefit that accrues to Mem- [fol. 621] phis by drawing the livestock direct from the originating territory it is entitled to as a matter of right as against a combination move through any other market. I would not say that our situation has radically improved under this adjustment over what it was formerly. Even if we have nearly $75.00 in our favor as contrasted with $47.00 in our favor under the old adjustment, we would have just what relatively we should have in our favor under the same relative adjustment.

As to whether it is our purpose in this case to force an advance in the rates on horses out of Kansas to the Missouri River markets, I stated at the outset that we did not come here to ask any advance in rates to any competing markets, but that in the final analysis we want the same relative basis of rates put into Memphis that is put into the other markets. What we really like to have would be a reopening of the case upon the Memphis rate, absolutely. As to whether I think the Memphis market would lose any business when the direct movement to Memphis has been favored in the way you have shown by these figures, I would answer by saying that there would be no loss but a gain, as you intended to show, providing that stock was sent through the Kansas City market. As I said previously, through, it is our desire to have that stock drawn

direct to the Memphis market and there distributed to the territory of consumption. As to whether horses would be likely to move via Kansas City market to Memphis and the Southeast where there would be a difference of $70.00 a car against the Kansas City market in favor of the Memphis market, I am not well enough informed on the cost prices and selling prices of horses to know what margin they can absorb. Doubtless that $75.00 difference in the [fol. 622] combination rates in and out of a market would have its effect upon the movement of horses to and from markets, but just where the point of limitation is I can not say. If it is later proven in this record that the receipts of horses at Memphis in 1923 were as much as in 1916 and 1917, before I could answer whether that would indicate a healthy or an unhealthy condition of the Memphis horse market I would like to know what is the volume; if the volume is relatively infinitesimal, if it is just a few horses, it would not amount to much.

Cross-examination.

By Mr. Fitzpatrick:

In speaking about the consuming territory of horses and mules from Memphis, I understand that the major portion of the horses are disposed of west in Arkansas and some in the southern territory. I can not say as to the Carolinas, but I understand they are shipping to Mississippi, Alabama and Georgia; I do not know about Columbia, S. C. I believe that Kansas City and St. Joseph pay a combination over Memphis on shipments going to Georgia.

Cross-examination.

By Mr. Bazan:

It is true that I am alleging that the present situation causes a discrimination against Memphis in favor of Wichita as one of the competing markets.

Cross-examination.

By Mr. Clark:

I certainly do not consider that horses and mules necessarily have to pass through the Kansas City market to the

Southeast; that is, that they have to be moved on a combination of locals. We are also in competition with the market at National Stock Yards, Illinois.

Cross-examination.

By Mr. Andrews:

Kansas City is not the only market with which we come in competition in the buying and selling of horses and [fol. 623] mules; the other markets we compete with are St. Louis and Wichita principally, I can not say as to Fort Worth.

J. H. TEDROW was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination (pro se):

I am Transportation Commissioner of the Chamber of Commerce of Kansas City, Missouri, and am appearing in this case for the horse and mule market at Kansas City. I have given considerable study to the horse and mule rates in southwestern territory. We had a case of our own, Docket No. 13001, which involved rates to the Southwest; it was decided in connection with the southwestern horse case and is under review or reopened today. We filed a petition asking reopening of this case as to the northern section for the reason that this decision would have the effect of increasing rates to Kansas City and the St. Joseph markets from Kansas, southern Missouri and Colorado.

We do not feel that the horse and mule business at the present time can stand any increases in rates. Receipts are off, prices are off. The scale proposed here will be higher than the Nebraska or South Dakota scales, as well as the southern Missouri scale, all of which were approved by this Commission. We do not feel that there is any real justification for any change in the Kansas, Colorado, or southern Missouri rates at this time. We believe the rates between Kansas City and Kansas, Colorado and southern Missouri should be left to stand as of the present basis.

The first part of Exhibit B-116 deals with the economic situation concerning horses and mules. Page 1 is a state-

ment of receipts of horses and mules at the public stockyards of the United States for the years 1915 to 1923, and [fol. 624] I call attention to the radical reduction in total receipts; in 1915, for instance, total receipts were 1,107,000 and for 1923 they were 551,000.

Page 2 is a statement of the receipts of horses and mules at the principal markets for the years 1900 to 1923. Turning to page 3, that will tell the story on sheet 2 at a glance. On page 3 is a chart showing the receipts of horses and mules, which shows that they began to take a radical slump about 1918, and for 1912 [1921?] they were lower than for any year since 1900 [1908?] at the principal markets shown on page 2.

On page 4 is a chart on which we have charted some of the principal markets, St. Louis, Chicago, Kansas City, St. Joseph, Fort Worth and Memphis, from 1916 on. I call attention to the fact that the Memphis figures in 1923 were only 2,000 less than the receipts in 1916 and 1917, and the receipts of horses and mules at Memphis have increased rapidly in the last two or three years, so that in 1923 Memphis occupied the second position of a horse and mule market; Chicago, which formerly occupied the second position, is down to next to the last position. These figures were taken from the Department of Agriculture Year Book for 1923.

On page 5 we have shown for the years 1900 to 1924 the number of and the price per head and the farm value of horses and mules. That information is charted on page 6 as to the horses. You will observe that the number of horses on the farms in 1924 is less than for any year since 1906 and that the value per head of those horses is less thtan for any year since 1906. The mules are charted on page 7, and are relatively less in number than the horses. While mules seem to be holding their own since 1920 as to numbers, the prices per head in 1924 were less than for [fol. 625] any years since 1906.

Page 8 is a typewritten statement showing values of horses and mules by age, grades, etc. It bears out the information we have shown previously, charted and otherwise, showing the low value per head of these animals at the present time. Page 9 shows farm price per head of horses and mules, the 15th of the month information, for the years 1910-1923, again showing the terrible shrinkage in the value

of these animals per head. Page 10 simply shows the number, value, and average export price of horses and mules, 1900 to 1923, showing shrinkage in value.

Page 11 shows receipts of horses and mules at the Kansas City market from 1912 to 1924. It shows that last year on the Kansas City market the receipts were smaller than for any years except 1921. The prices are also shown below, also bearing out the terrible shrinkage in values. On pages 12 and 13 I have taken the average monthly farm price per head, the 15th of the month, by states for the year 1923. On page 14 is a map on which I have put those values. I have drawn a line around this affected territory concerned in this proceeding here and call attention to the fact that in Kansas the average farm value of the animals was $58.00 a head and in Missouri $57.00 a head. Those figures are lower than for any other State with the exception of Oklahoma, which was $50.00, and Wyoming, which was $54.00. The Colorado figure is a little higher. This is the territory where they are proposing to increase rates and we have the lowest average farm value per head at the present time.

Page 15 is a statement taking the years for 1912 down to 1924 and showing receipts of horses and mules at Kansas City from the various States. I call attention to the fact that Kansas furnishes the largest number of horses for [fol. 626] the Kansas City market. Out of the 36,000 head received in 1924, 13,000 were from Kansas. Out of the 42,000 received in 1923, 19,000 were from Kansas. These figures include mules. These are the rates that it is proposed to increase. Missouri also furnishes a large number of our horses and mules, as 12,000 in 1923 and 11,500 in 1924, roughly speaking, were received from Missouri. At the bottom of that sheet I show certain figures for the Chicago, Fort Worth, St. Louis, and St. Joseph markets for 1924. Those are shown here because I have charted them on the previous chart. I did not have the actual receipts for 1924 in the previous statement.

On pages 16 and 17 we have compared the scale proposed in this case with the Shreveport scale, the southern Missouri scale, the southern Nebraska scale, the South Dakota scale, and 115 per cent of the southwestern cattle scale simply to show how those scales line up with each other. Further on in this exhibit we show the Nebraska scale, and

wherever it is referred to it means the southern Nebraska scale and not the northern Nebraska scale.

On page 18 is a chart in which I have shown the application of these various scales, the territory within the heavy white line being that covered in this case. You will see that it slops over, if you might put it that way. The State of Missouri breaks in the southern portion, which has already been covered by this Commission in the Dimmitt-Caudle-Smith case, referred to on the face sheet, and a scale of horse rates has been prescribed for that southern Missouri territory. In the southern portion of Texas it encroaches upon the territory covered by the Shreveport scale, reference to which is given. In the northern portion, along the State line of Kansas, it meets with the Nebraska scale prescribed by this Commission.

[fol. 627] As shown on sheets 16 and 17, this scale, as proposed, is much higher than the Missouri scale and much higher than the Nebraska scale, and its encroachment in this northern territory is bound to disrupt the situation concerning those other scales; for example, you can not have it applying on the northern border of Kansas or down in the middle of Kansas without involving the Nebraska scale, and you can not have it applying in southern Missouri without involving the northern Missouri scale. To show what the carriers thought of those rates, as far as this goes, it is prescribed to cover all territories south of the Missouri River in Missouri. The Missouri Pacific parallels the Missouri River on the south side thereof. The division of the State of Missouri into north and south sections has always been made south of the Missouri Pacific line, which has always been included in the northern Missouri territory. It has a high density low grade line across the State comparable with the C. & A. and Wabash. The line that has been drawn by the Commission in this case includes all the territory south of the Missouri River, which would include the main line of the Missouri Pacific from Kansas City to St. Louis. That is wrong for the reason that the main line of the Missouri Pacific has always been included in northern Missouri territory for rate-making purposes. The division of the State of Missouri as to rate-making purposes will be found in the Dimmitt-Caudle-Smith case, where they prescribed a higher rate for southern Missouri than for northern Missouri, and the Missouri Pacific was put in northern Missouri. The point I am leading to is that

you can not have this higher scale apply on this main line of the Missouri Pacific across the State of Missouri without having enroached on northern Missouri.

[fol. 628] On page 19 I have taken the Nebraska scale on horses and set it down beside the South Dakota horse scale. The Nebraska scale on horses progresses more rapidly the greater the distance increases, and in that regard it is a departure from any other recognized mileage scale. I have taken it for 400 miles on, though I really ought to have gone back about 300 miles and made a comparison, and then I show on the last column what the Nebraska scale would be if progressed on the same basis. Instead of having 1,000 miles at a 94.5-cent rate, as at present on the Nebraska State scale, we would have a 62-cent rate.

On page 20 is a chart on which I have drawn these various scales, the heavy line being the scale proposed in this case. I call attention to the fact that after it gets beyond 100 miles it is substantially greater than the Shreveport scale which applies in Texas and between Texas and Shreveport, and which was extended by this Commission to Natchez in 21 I. C. C. 558 and was found reasonable to apply in southwestern territory in that case; the Commission even went so far as to allow reparation on shipments from Natchez in the Cook Livestock Commission case, 68 I. C. C. 130, so we must assume that the Shreveport scale is at least not unreasonably low.

I also show on there where the South Dakota scale goes; it applies in the State of South Dakota. Mr. Corp has already made a comparison of traffic density of that State as against Kansas. I also show the Nebraska scale, the progression of which is not in line with other mileage scales. You will notice it shoots up and exceeds this proposed scale at 700 miles, and it exceeds the South Dakota scale at 425 miles. I have progressed the Nebraska scale on the same basis as the South Dakota scale for 400 miles [fol. 629] and you will see where it runs. The southern Missouri scale is also shown there. This exhibit demonstrates the high level of the scale prescribed in this case as compared with other scales of rates applying in this general territory. Another thing I want to say is that this proposed scale is the scale 12 of the 9702 case, 77 I. C. C. 473, and was laid down there to apply on bags, soap and potatoes, carloads.

On sheet 21 is a map of Colorado, Kansas and Missouri, on which I have indicated various points used in making comparisons of rates on the statement following. On sheets 22 and 23 I have taken the points indicated in Kansas and have made comparisons of the present and proposed rates and shown the increase in cents, the Shreveport scale, the southern Missouri scale, the Nebraska scale and the South Dakota scale. At the present time the rates from Kansas to Kansas City are named per 36 foot standard car and I have reduced that figure to get a comparable basis in cents per 100 pounds by dividing the minimum for a 36 foot car of 23,000 pounds into the charge per car. This statement shows that the rates proposed are very much higher than the present rates; they are higher than the Shreveport rates, higher than the Nebraska scale, and higher than the South Dakota scale.

On page 24 I have shown the same thing from Colorado, and on page 25 I have made the same comparison from southern Missouri. In the Dimmitt-Caudle-Smith case that I have referred to, this Commission prescribed certain rates on horses in southern Missouri which apply to St. Louis and East St. Louis. The scale never did apply to Kansas City, but our rates line up very well with that scale. The Dimmitt-Caudle-Smith scale rates will be entirely wiped off the board by this decision and order if the order [fol. 630] stands. On page 26 I show three Missouri points, which showing stresses the point that the rates the Commission has already prescribed will be done away with by the rates proposed here.

In connection with pages 27 and 28 I call attention to the map on page 29. On this map I have taken certain points in northern Kansas and southern Nebraska and in central Colorado and northern Colorado, and have shown the present and prescribed rates from Kansas points as against the present rates from Nebraska and Colorado points. Taking Burlington, Colo., for example, at the present time the rate from there to Kansas City is 39.25 cents, reduced to a per 100-pound basis. Burlington, Colo., is on the Rock Island and is in the territory involved in this case. Laird, Colo., is a point on the Burlington north of Burlington, Colo., and the rates now line up very well. The Burlington rate is 39.5 and the Laird rate is 40.5, but the prescribed rate from Burlington will be 55 cents. In the same way, the rates from those two points to St. Louis are almost

identical now, Laird being 54.5 and Burlington being 56, but the prescribed rate from Burlington to St. Louis would be 69 cents. Rates to Chicago and Omaha are not involved in this case, and no order or finding has been made as to those rates to Chicago and Omaha, and presumably they will stand. What I have shown as to Burlington and Laird will do for the other Colorado points shown.

Turning to page 28 and taking any two nearby points on the map, Burr Oak, Kans., for example, now has a rate of $67.00 per car, and Guide Rock, Neb., has a rate of $69.00 per car to Kansas City, but this case prescribes a rate from Burr Oak to Kansas City of $89.50. It is obvious that these rates can not go into northern Kansas unless they involve, eventually at least, the Nebraska rates. Going to St. Louis, the Burr Oak rate is now $118.00, which will go to $135.00, [fol. 631] as against a rate of $107.50 from Guide Rock. Chicago and Omaha will get no changes; at least, they are not involved in this case. With this Commission prescribing rates in the Nebraska case and the South Dakota case, the rates in Kansas should not be higher at the farthest than those rates.

On page 30, 31, and 32 I have shown certain data comparing rates from Kansas points and Colorado points and the present and the prescribed basis to Kansas City, St. Louis, Chicago and Omaha. Bellville, Kans., for instance, is 203 miles to Kansas City, and our $61.00 rate will go up to $83.00. It is 150 miles to Omaha and their rate will stand. The rate of $67.00 from Concordia to Kansas City will go up to $83.00, but the 79.50 rate to Omaha will stand where it is. The differences, St. Louis over Kansas City, is going to be disturbed on all these rates, while at the same time the Chicago rates will presumably stand on the present basis; at least there is no finding as to those rates, although Chicago is usually rated differentially over St. Louis. Going to page 32, the rate from Sheridan Lake, Colo., to Kansas City is now $101.00 per car and the rate to Omaha is $118.50 per car, but this proposal would make the rate to Kansas City $129.00 per car, or $8.50 over the Omaha rate.

Exhibit B-117 is a statement of traffic density in territory north and territory south of the Missouri River in the State of Missouri; the exhibit was prepared under my direction and speaks for itself.

(Exhibits B-116 and B-117, Witness Tedrow, were duly received in evidence.)

[fol. 632]. A. L. BAZAN was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination (pro se):

I am Traffic Manager of the Wichita Chamber of Commerce, formerly the Wichita Board of Commerce. The position of the Wichita horse and mule interests in this case is, stated in brief, that they object to the application of the scale prescribed in Docket No. 12358 and others, in that it will not fit the situation in Kansas, that it is entirely out of line with rates in the territory adjacent to Kansas, and that the rates in all cases would be increased. They particularly object to increases by reason of the conditions in the horse and mule industry obtaining to-day, and they further contend that any increase would be detrimental to the raisers of these animals as well as to the market points.

Exhibit B-118 is to show that the scale prescribed in No. 12358 was for 100 miles as the lowest distance, and the carriers apparently took it upon themselves to grade the rates down below 100 miles. It is my contention that the scale below 100 miles is improperly constructed, that it is too high, and that it does not bear a proper rate of progression to the balance of the scale.

As shown on page 1, the rate of progression prescribed by the Commission between 100 and 200 miles was 11 cents, the rate for 300 miles was 9 cents higher than the 200-mile rate, and the 400-mile rate was 6 cents more, or 3 cents less than the increase for 300 miles; in other words, from 100 miles on, the spread between the 100 mile blocks decreases as the distance increases, which has been considered the [fo' 633] proper method of rate construction. Under the rate of progression between 200 and 300 miles, 2 cents, carrying that rate of progression back from 500 to 100 miles would make it 13 cents; in other words, the rate dropped 2 cents between 200 and 300 miles, and I believe the progression should be 2 cents higher between 500 and 100 miles.

On page 2 I have shown the rate published by the carriers from 5 to 100 miles, the rate I contend would be the proper one were the scale properly constructed, and the amount the published rate is higher than the rate should be. The first block to the right of the mileage designation is the single-line, and the second block, the extreme right-hand block, is the joint-line scale. In connection with this page, although the Commission in the scale between 100 and 200 miles prescribed grades no greater than one cent for any 10 mile block, between 75 and 105 miles the carriers published the same rate; in other words, in the publication of their scale a 30-mile block was created at the same rate in the first 100 miles, while there was no block greater in extent than 10 miles in the second 100. The apparent necessity of this 30 mile block is caused by the fact that the scale was started at a rate too high, that is, a high enough rate of progression was not used in the first 100 miles.

Exhibit B-119 shows the present charges per car on horses and mules from points on the Santa Fe Railway, Coolidge to Wichita, Kans., compared with the charges which would result were the 12358 scale applied for these hauls. These represent movements I would say in all cases and I believe that this is representative of the State of Kansas, as my succeeding exhibits will bear out the relationship between the rates on all lines. Due to the short time we had in preparing these exhibits, it was hardly [fol. 634] possible for me to show all percentages, so we have just taken the totals and compared the percentages of the totals.

On page 2 the 100 per cent, shown there in pencil, against the $1077.45 total, is 110 per cent of what is known as the standard car charge in Kansas, which is on a 30 foot car, a 36 foot car being uniformly rated in Kansas at 110 per cent of the 30 foot car charges. The 12358 scale charges shown on this exhibit are computed on a 36 foot car basis. The exhibit shows that the percentage of increase would be 38 were the 12358 scale, as now published in Leland's I. C. C. 1735, applied to these comparisons. If the 12358 scale as it should be were applied the increase would be 35 per cent. The per cent sign means that the charges against which that sign is shown in those several instances are on the 12358 scale as it has been published by the carriers. The X sign designates the charges which would

obtain if the correct 12358 scale were published below 100 miles.

Exhibit B-120 compares the rates on horses and mules prescribed in No. 12358 with the beef cattle rates under the 1716 or southwestern or Shreveport scale, as it is known. That is also sometimes called the 2797 scale. As to whether it is the 1716 scale and the Shreveport scale modified, as it is to-day it is just a mess of a lot of things, but it is commonly known as the 1716 scale and the rates are practically on the original basis, subject to the increases and reductions. Considering the scale as a whole I am sure of that. It is higher for shorter distances and lower for longer distances. Possibly it would be better to call it the southwestern scale, because in the decision in No. 12358 it is mentioned more by that name than any other. The exhibit reflects that the horse and mule rates from 100 to 800 miles [fol. 635] for both single-line and joint-line distances under the 12358 scale are 120 per cent of the beef cattle rates for similar distances. This scale applies within the State of Texas.

On Exhibit B-121 we have compared the charges per car on horses and mules from stations on the Santa Fe, the Missouri Pacific, the Rock Island, and the Union Pacific in Kansas to Wichita with the rates on beef cattle from the same stations to Wichita. In all my exhibits I have taken stations by 15 mile blocks or jumps, and believe that will give us a fair comparison. The typewritten figures in the exhibit are on a 30 foot car basis, and to get out total charges for a 36 foot car I took the totals on the 30 foot car basis for each line and took 100 [110?] per cent of those charges to bring it down to the 36 foot car basis. That figure is correct with the possible variation of, I would say, not exceeding 5 cents in the total. The mileages were computed, by using the official distance tables of all the lines shown.

On page 4 is a recapitulation of the preceding three pages. The corrected totals on this exhibit are the 36 foot car charges. It shows that on all of the points used in the preceding three pages the charges on horses and mules in 36 foot cars as a total would be $5356.45, and the charges from the same stations on beef cattle in 36 foot cars is $4179.90. Below is shown the percentage the horse and mule charges per car are of the beef cattle charges, which indicates that the Kansas horse and mule charges for 36

foot cars are 128 per cent of the beef cattle rates. In Kansas the charges are published in dollars and cents per car on horses and mules and the beef cattle rates are in cents per 100 pounds, subject to a minimum of 22,000 pounds per car. That is both intrastate and interstate from Kansas to the Missouri River and from Colorado to [fol. 636] Kansas and from Colorado to the Missouri River.

On Exhibit B-122 we have taken the beef cattle charges for the line of the Santa Fe from Coolidge to Wichita and have set against that the total charges for cars of horses and mules from the same stations and compared the totals. The first horse and mule comparison is on basis of the 12358 scale, as published, which indicates that if it were to be applied within the State of Kansas the horse and mule charges for 36 foot cars would be 170 per cent of the beef cattle charges. If the 12358 scale were corrected and the charges published from that line the horse and mule charges would be 167 per cent. I think that is representative and I am offering the exhibit with the idea in mind that it is representative of the State. There is no minimum weight on the horse and mule charges per car, as the rates are built on percentages of a standard car, although I am using the 23,000 pound minimum in this exhibit.

Exhibit B-123 is a statement showing the percentage the charges per car on horses and mules under the Nebraska scale are of the beef cattle charges per car prescribed by the Commission under the Nebraska scale. In other words, we are comparing the horse and mule charges for 36 foot cars with the beef cattle under the Commission-made rates in the Nebraska Livestock case, 89 I. C. C. 444. In that proceeding the Commission prescribed 115 per cent of the beef cattle rate on horses and mules. The horse and mule charges per car will be 120 per cent of the beef cattle charges for distances of from 500 to 600, using 100 mile jumps, except to the first 100.

Exhibit B-124 is a statement comparing the rates on beef cattle, carloads, from Kansas stations on the Rock Island, [fol. 637] Santa Fe and Union Pacific lines to Kansas City with the rates from Nebraska stations on the C., B. & Q. and Union Pacific to Kansas City and with stations on the Union Pacific in Nebraska to Omaha. In other words, I am here comparing the beef cattle rates into Kansas with those prescribed by the Commission in the Nebraska Livestock case. The purpose of the exhibit is to justify the

previous showing on the horse and mule charges per car to the beef cattle charges in Kansas. A further justification of the relative levels of the Kansas rates and the Nebraska rates as being approximately on a parity is contained in the Commission's decision in the Nebraska case. Lest there be some misconstruction of the Commission's decision with the idea that it meant northern Kansas, I have compared the rates in southern Kansas as well. I have shown the amounts in the respective individual comparisons that the Kansas point rate to Kansas City is over the Nebraska point rate to Kansas City or Omaha, and the amounts the Nebraska point rate to Kansas City or Omaha is over the Kansas point rate to Kansas City.

Page 4 is a recapitulation of the rates shown on the preceding three exhibits, and shows that the total of the rates from Kansas points to Kansas City is 1,634.5 cents and from the Nebraska points to Kansas City and Omaha it is 1,630.5 cents, only 4 cents difference. The comparisons are all for approximately equal distances, as nearly as I could match them up, and reflects a 100 per cent relationship on the beef cattle. We contend nothing different should obtain on the horses and mules, indicating that the rates on horses and mules in Kansas to-day are higher than they should be, because the beef cattle rates compare with the Nebraska rates while our horse and mule charges per car are 128 per cent of the beef cattle rates and in Nebraska they are [fol. 638] 120 per cent. The beef cattle rates in Nebraska were published about seven months ago; the Commission's decision in that case was rendered on April 15, 1924, and the reading of the report therein convinces one that the Kansas rates were and must have been duly considered in disposing of the Nebraska case.

Exhibit B-125 is a comparison of the charges on horses and mules in 30 foot cars from Kansas points to Wichita with the rates from Kansas points to Kansas City for approximately equidistant hauls. This exhibit is to show that the Kansas rates are on the same relative level as the Kansas to Kansas City rates; in other words, that the intrastate rates are practically the same as the interstate rates, something the Kansas people do not particularly object to. I am not contending that the beef cattle rates in any of these comparisons are what our friends might say are proper; I am merely making comparisons of the existing rates, and I am not going behind the justification

of the beef cattle rates in Nebraska or any other places. There is no competition between horses and mules and beef cattle that would necessitate a relation in rates, but the Commission has found a relation in many cases that I think is very nearly proper.

Exhibit B-126 compares the figures per car under the scale of rates prescribed in No. 12358 over 100 miles and the published as well as the correct scales; by correct scale I mean the scale prescribed by the Commission from 100 to 1000 miles as graded down in line with the rate of progression beyond 100 miles. I might mention here that the gradation in southwestern cattle scale between 10 and 100 miles is 13.5 cents; the gradation in the Nebraska scale from 10 to 100 miles is 9.5 cents. The gradation for the distance from 100 to 200 miles under the southwestern scale is 6 cents, and under the Nebraska scale from 100 to [fol. 639] 200 miles it is 7 cents, while from 200 to 300 miles it is 3.5. In other words, the rate of progression between the 100 mile blocks decreases on those scales.

The exhibit shows that the charges per car under the 12358 scale applied to the distances shown in comparison with the charges per car under the Nebraska scale would be quite generally increased. Under the published scale the increase would be 24 per cent, and under the scale as I claim it should be it would be 22 per cent.

Exhibit B-127 is a small Rand McNally map of Kansas encircling the points used in Exhibit B-128; it is merely a graphic chart of Exhibit B-128 which reflects the difficulty that would be encountered in an attempt to publish the 12358 scale in Kansas as concerns the haul to Wichita. In the first block we have Du Bois, Neb., the first station across the line on the Rock Island in northeastern Kansas, and below that is Bern, Kans., the first station on the Rock Island coming from Nebraska. The exhibit shows that the present charges per car are $53.50 in each instance. There is no spread across the line to-day. Were the 12358 scale published from Bern to Wichita the charges would increase from $53.50 to $89.70, and the Kansas point rate would then be $36.20 higher than the rate from the Nebraska point immediately beyond; in other words, a fourth section violation or departure. All those Kansas and Nebraska comparisons reflect the same situation; that is, that the rates from the Kansas points would be higher than from the Nebraska points, which merely brings out the fact that

even if the scale were published in Kansas it could not be retained as prescribed under the Commission's order. The present rates from Kansas points to Oklahoma City are [fol. 640] apparently coupled with the 12358 case, and in answer to the question asked me I guess Kansas is the same distance from Oklahoma that it is from Nebraska.

Mr. Larimore: I might bring out there, Mr. Examiner, that the Oklahoma rates on livestock have always been, as far as I can find, higher than the Kansas rates. I think that carries beyond question generally to the rates in general.

Exam. Eshelman: Do you think the Kansas rates should be lower?

The Witness: Yes, sir. I do not mean that only intrastate; I mean the level, to move the traffic as it moves, should be lower than the Oklahoma situation. I think the Kansas rates should generally be lower than the Oklahoma rates, both for intrastate and interstate application.

I think I have gone over the Nebraska situation fully enough to be comprehensive, and getting down on the Oklahoma line, taken on the whole, the exhibit reflects that the present spreads, even with the 12358 scale applying from the Oklahoma points to Wichita, in no case would create, nor has it in any case created, a violation of the aggregate of intermediates clause of the fourth section of the Act. I have just shown that there will be violations on the Nebraska boundary line as to the long and short haul clause; that is on the present basis, and those spreads are shown in the third column to the right of the station designations. The maximum spread in any of those rates on the present basis is $24.20, which is not enough to cause an aggregate of intermediates violation.

If the scale were to be corrected and applied from the Oklahoma points, those spreads over the border would be [fol. 641] materially lessened, as is designated in the last two right-hand columns on page 2 of the exhibit; the maximum spread over the line would then be $22.30, and that is at a point where we have been unable to discover any movement. The principal movement from Oklahoma into Wichita would be from the first Oklahoma point shown, I would say, down to Caney, Kans., but I have tried to take the entire line around the State to show exactly what obtains to-day, what would obtain if the corrected scale

were applied, and the fourth section violations that would be created on the Nebraska-Kansas border by the institution of the 12358 scale within Kansas.

Exhibit B-129 compares the charges for a 36 foot car from Colorado stations on the Rock Island with the charges from cross-country Union Pacific stations in Nebraska to Kansas City; that is as near cross country as the distance permits. The exhibit shows that on those comparisons there is only $6.80 difference in all those rates, that is, in favor of the Colorado rates, indicating that they are on a level approximating the Nebraska rates and the Kansas rates. I will make the statement on the record that to-day the Nebraska scale is applied on livestock generally from Rock Island stations to Wichita, Kans.

That concludes my statement on direct, except that I would add that I think the testimony I have given and the exhibits I have introduced conclusively show the impracticability of the 12358 scale in Kansas, and the position of the Wichita interests is that they are desirous of the basis of rates in effect in Kansas to-day being allowed to stand and that the 12358 scale be stopped in its application exactly as it stands at this time.

(Exhibits B-118 to B-129, Witness Bazan, were duly received in evidence.)

[fol. 642] Cross-examination.

By Mr. Larimore:

I wish to stop the 12358 scale as it exists at present. It is true that scale applies from Oklahoma points to the lower Missouri River, from Oklahoma points to Wichita, from Texas to Wichita and the lower Missouri River points, but I think we should remain in our present status under the Oklahoma and Texas rates so far as Kansas is concerned. One of the reasons for that is that, if it were applied from Kansas, Kansas would be over Nebraska as Oklahoma now is over Kansas.

Cross-examination.

By Mr. La Coste:

I did not say that the horse and mule rates on Exhibit B-120 were made 120 per cent of the beef cattle rates, al-

though I show that on the bottom of the exhibit; I said the Commission has prescribed a relationship of horse and mule rates to the beef cattle rates which I thought is about proper. The intent of this 120 per cent on the bottom of the exhibit is exactly what it says there; it shows that the 12358 scale applied for hauls of from 100 to 800 miles is 120 per cent of your single-line and joint-line beef cattle rates now in effect in what is known as the southwestern scale. I did not figure the relationship for the mileage from 345 to 500; I have considered the scales as a whole, as I think they should be considered. It is true that at 345 miles the cattle rate is 43 cents and the horse and mule rate is shown as 48 cents, or 3.5 cents less [fol. 643] than the 120 per cent basis, but there are doubtless other comparisons here where the rate is higher than 120 per cent, it must be to bring the total. I think you misunderstood the comparison; it is not a showing that the rates are uniformly 120 per cent of the southwestern beef cattle scale, but merely that the total for those distances on horses and mules is 120 per cent of the beef cattle for similar distances.

As to what is the longest distance we haul horses into Wichita, I would say offhand that very few horses come in from distances over 500 miles. On that particular scale it may be that we are getting better than 120 per cent over the cattle rates, but I would have to take the whole scale from that distance and compare it to get the total. I do not think that one particular comparison affords anything in a comparison of this sort.

Examination.

By Examiner Eshelman:

I think the only solution of this case is for the Commission to allow the 12358 scale rates to remain in effect in the territory wherein they are now in effect, and to leave rates in the northern part of this general southwestern territory, as it was described in the report, on the present basis. It has to be stopped some place, and I think I, as well as preceding witnesses, have conclusively shown that you can not very practically stop it on the Nebraska line. Consequently, with the rates graded fairly well over the Oklahoma line, why not let it go as it is today, because it

does not create fourth section violations as it will on the Nebraska line. If the scale is corrected the gradation will be more proper and I think that would be a mighty good place to stop it. When you come from Nebraska you will [fol. 644] be coming from a lower rated territory into a higher rated territory, and when you come from Oklahoma you are coming from a higher rated territory into a lower rated territory; that is quite obvious.

W. H. FITZPATRICK was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination (pro se):

I am Manager of the Traffic Bureau, Chamber of Commerce, St. Joseph, Missouri, and appear for interveners in behalf of petitioners. The position of the St. Joseph horse and mule interests is that the present rates from Kansas are reasonable and should be allowed to stand, and that the proposed rates are unreasonable.

Exhibit B-130 is a statement of the census figures of 1920, showing the numbers of horses and mules on farms and ranges in Kansas, Nebraska and South Dakota. Note that the numbers of horses and mules in Kansas exceed those in Nebraska by about 100,000 on horses and almost triple the number of mules in Nebraska, and that they exceed the figures shown for South Dakota by some 200,000, with about fourteen times as many mules as in South Dakota.

Exhibit B-131 is a comparison of scales prescribed by this Commission in South Dakota v. C. & N. W., 77 I. C. C. 461, covering livestock from points in Minnesota, Wisconsin, Iowa, Illinois, Missouri and Nebraska. The heading should read "Covering Livestock from Points in South Dakota to Points in Minnesota," etc. It is a comparison with the scale proposed in 93 I. C. C. 479 for application from Kansas, eastern Colorado, and southern Missouri to the Missouri River and St. Louis. The right-hand column shows that the scale proposed in this case exceeds [fol. 645] the scale prescribed from South Dakota to points in Missouri and other States by percentages ranging from 2 to 28.

Mr. Corp showed in Exhibit B-93 and B-94 that the net ton-mile revenue per mile of road was 398,663 and that the net revenue ton-miles per mile of road for the State of Kansas was 887,812, showing that the density in Kansas is more than double that in South Dakota. The comparisons shown in Exhibit B-131 in connection with the density figures I have just cited show that the scale herein proposed exceeds the South Dakota scale by as much as 28 per cent.

Exhibit B-132 is a comparison of the scale prescribed by this Commission in the Nebraska Livestock case from points in southern Nebraska to Missouri River points with the scale proposed in 93 I. C. C. 479. The scale proposed in the case which we are rehearing exceeds the scale prescribed for application from southern Nebraska to Missouri River points by percentages ranging from 7 to 38.

Exhibit B-133 is a comparison of the scale prescribed by this Commission in the Nebraska Livestock Case, 89 I. C. C. 444, from points in northern Nebraska to Missouri River points with the scale proposed in the case we are rehearing. The scale of rates here proposed exceeds the scale prescribed for northern Nebraska by percentages ranging from 5 to as high as 28. In 89 I. C. C. 458, the Commission in prescribing this scale from northern Nebraska to Missouri River points limited it to the line of the North Western extending from Scribner via Dakota Junction into Wyoming and South Dakota and from other points in Nebraska north of Albion, Humphrey, Scribner, and Oakland. Referring to Mr. Corp's Exhibit B-96 we [fol. 646] find that the density of tonnage on the C. & N. W. is 756,827 net revenue ton-miles per mile of road as compared to an average for the State of Kansas shown in Exhibit B-93 of 887,812 net revenue ton-miles per mile of road.

Exhibit B-134 is a comparison of rates prescribed in 47 I. C. C. 287, known as the Dimmitt-Caudle-Smith scale, with the scale proposed in this case. That scale is for northern Missouri points, and the rate herein proposed exceeds the rates prescribed in the Dimmitt-Caudle-Smith scale for northern Missouri in percentages ranging from 17 to 46.

Exhibit B-135 is a statement showing rates from representative stations in Kansas and Colorado to St. Joseph

from June 24, 1918, to the present date and the rates proposed. At the bottom of this sheet are shown the average prices on horses and mules for January of each year, 1919 to date.

I have prepared a map showing the distribution to the Kansas and Colorado stations, but failed to make copies of it. In connection with this exhibit I would like to submit a map merely showing the location of these stations in Kansas.

Exam. Eshelman: You will be permitted to furnish for the record within 10 days the map such as you have described. (Note: A copy of this exhibit was later received in evidence and filed, a copy being transmitted herewith as an original exhibit.)

The Witness: The designation at the top of the third column where it says "Rate per standard car as of January 24, 1918" should be June 24, 1918. The averages just below the rates shown for the stations show that before June 24, 1918, the average rate per standard car was $51.28, that since June 24, 1918, it was increased to an average of $77.84 per standard car, and that the scale [fol. 647] herein proposed would further increase that average to $109.91 per standard car, an increase of better than 100 per cent. Just below that you will see the prices of horses and mules as of January, 1919 to 1925, which was also testified to by Mr. Nash yesterday. Note that the prices of horses have decreased from $110.00 to $45.00 and mules from $208.00 to $116.00. The number of horses and mules per car runs between 22 and 24, as testified by Mr. Nash yesterday, so the advance proposed here per standard car over the average at present, $32.07, is $1.33 per head figuring 24 horses and mules to the car.

Exhibit B-136 shows the actual short-line distances and the single-line short-line distances from representative points in Kansas and Colorado shown in Exhibit B-135, also the present and proposed rates from these points in Kansas to St. Joseph and Kansas City. This exhibit is to show what would have been the effect on the Kansas City and St. Joseph markets had the scale proposed been allowed to become effective. At the present time the rates from these Kansas and Colorado points are the same to St. Joseph as to Kansas City, but under the proposed

basis this market parity or equality would have been broken up had the mileage scale prescribed been strictly followed, and that is something not desired by either market. I think Kansas City will concur with me that both the St. Joseph and Kansas City markets desire at all times equality of rates into and out of those markets, maintaining the lower Missouri River crossings on a parity.

As to whether the rates quoted here are in all cases those for the standard car, these exhibits were prepared by my rate man and he took the figures as he found them in the tariffs. In cases where the rates were stated in [fol. 648] cents per 100 pounds he used 23,000 pounds in arriving at the rates shown for a standard car, which accounts for the fact that in Exhibit B-135 these averages end in unequal numbers. As a general proposition all rates are quoted per standard 30 foot car, which none of the railroads in this section supply; there are practically no 30 foot cars in use any more. As to whether 30 feet is a standard car for the purpose of horse and mule shipments, there seems to be a variation in the tariffs. In the decision in this particular case I find the Commission prescribed 23,000 pounds for a standard car, referring to Fonda's I. C. C. 148, which gives us 23,000 pounds for a standard car, but in that case the rates were prescribed in cents per 100 pounds and then made subject to a minimum weight. As the carriers don't furnish 30 foot cars, where the tariff states the rate per 30 foot standard car it means a higher per car charge when you get into the 36 foot car, which is the smallest that is furnished, so the rates would all be higher than are shown. The 23,000 pound minimum does not apply to a 30 foot car, but we took 23,000 pounds in establishing the rate for car because that was what the Commission used in this case.

With reference to Witness Nash's Exhibit B-112, I notice there are some differences between the figures for receipts of horses and mules at St. Joseph as against the receipts shown in Mr. Tedrow's exhibit taken from the Agricultural Year Book. I investigated that and find that the greater figures shown in the Agricultural Year Book are probably accounted for by the fact that all cars of horses and mules that are stopped for feeding at St. Joseph are given credit as receipts at St. Joseph in the Agricultural Year Book, whereas the figures introduced by Mr.

[fol. 649] Nash are those actually handled on the market at St. Joseph. I obtained that opinion from Mr. Nash before he left last night, that being taken from his own knowledge of the situation.

(Exhibits B-130 to B-131, Witness Fitzpatrick, were duly received in evidence.)

Cross-examination.

By Mr. Larimore:

I said that the rates from Kansas points in my opinion should not be increased. As to how nearly the car-mile earnings on horses and mules should approximate the car-mile earnings on all traffic, when you take all traffic into consideration I would hate to even make a guess at that. I think you must consider your horse and mule rates in this case under the Hoch-Smith Resolution; in other words, I feel that the present rates from Kansas are all the traffic can bear at this time. As to what my opinion would be if I should eliminate from the question the Hoch-Smith Resolution, I haven't made any study of that and would hesitate to express an opinion on it. My statement that the rates from Kansas should not be increased is based solely on the condition of the industry and the rate comparisons I have made here with the Nebraska and South Dakota scales and the Dimmitt-Caudle-Smith scale. It is my opinion that the rates from Kansas here under consideration are not unreasonably low; you might make some changes in there without making them unreasonably high. I think the scale as at present is a reasonable scale and that a horizontal increase in that scale would produce unreasonable rates.

Taking the present rate of $83.50 a car for 389 miles from Garden City to Kansas City, yielding car-mile earnings of 21.5 cents, I would say those car-mile earnings are indicative of a reasonable rate from Garden City to Kansas City on horses and mules, considering the fact that the [fol. 650] horses and mules can not stand any more than that. I do not believe we can eliminate the Hoch-Smith Resolution here or eliminate the fact that the traffic can not stand any more. As to whether in all my assertions that the rates are at present as high as they should be I

have included the ideas supposed to be embodied in the Hoch-Smith Resolution, in all rate regulations you should not have any higher rates than the traffic can bear, and showing the South Dakota and the Nebraska scales. If it should hereafter appear that the car-mile earnings on shipments of horses and mules in substantially all territory in the United States other than Nebraska and South Dakota are higher than the car-mile earnings on traffic from Kansas to Kansas City, I would not take that as any indication that the present rates from Kansas to the Missouri River should be increased; I haven't any figures to show, but I think you will find that the livestock traffic in Kansas, Nebraska and South Dakota is much heavier than in other sections of the United States, that is, per mile of road. I am stating that as an opinion right now. When you get over into the East you have some livestock and horse and mule rates that are higher, but you have no livestock and horses and mules in any quantity to move over there; in other words, as I picture the thing, you have a heavy traffic of livestock in this section of the country, and your scale of rates should be lower in this section than you should have in the East or anywhere else in the United States. I am not assuming that there is no livestock traffic in Illinois, Indiana and Ohio. I think the traffic will be as great in Iowa as in Kansas, but I don't know about Ohio and Indiana, I have no figures.

Commissioner Mercer: You are referring in your statement to horses, are you not?

[fol. 651] The Witness: Well, in this case, yes.

Mr. Larimore: I said livestock; I meant horses and mules.

Commissioner Mercer: That is all right then.

Petitioners rest.

F. B. Clark was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination.

By Mr. Larimore:

I am Assistant General Freight Agent of the Missouri Pacific Railroad Company, headquarters St. Louis, Mo.,

representing in this case the Missouri Pacific and other southwestern trunklines parties to the case. I have some general information in connection with the horse and mule traffic. I was raised on a farm and have owned horses and mules. I have kept very closely in touch with the livestock situation since I have been with the Missouri Pacific, and all my folks are farmers. In preparation of the testimony here given in this case I have conferred with those doing business at the markets and familiarized myself with the conditions surrounding the marketing and selling of horses and mules. I have kept very closely in touch with the large horse and mule buyers and I am personally acquainted with them at the National Stock Yards, Illinois. I have also kept very closely in touch with our livestock agents at Kansas City who have charge of the solicitation and handling of livestock for our system, consisting of over 8,000 miles, including this territory. Prior to this hearing I have participated in the recent big livestock cases before the Commission and especially those in central freight association and southeastern territories. I have made a special study in connection with the issues involved in this case, and in fact, [fol. 652] have testified at the original hearing at Fort Worth sometime back. I have a general statement to make before proceeding to present my exhibits in evidence.

These three complaints all involve carload rates on horses and mules between Fort Worth and points in southwestern and western territory, involving for the most part the states of Arkansas, Kansas, Louisiana, Oklahoma, New Mexico, Nebraska, Colorado, and Arizona. However, by the Commission's order of March 16, 1925, Docket Nos. 12358, 13619 and 13627 are reopened only to the extent that rates are affected from or to points in Kansas, Colorado and southern Missouri to or from Wichita, Kansas City, St. Joseph and St. Louis, and that the Commission has specified that the reopening of those cases where the distance tariff scale has been promulgated for application throughout the entire Southwest, including the states of Arkansas, Oklahoma, Louisiana and Texas, with the exception of differential territory in Texas. Attention is particularly directed to the Commission's order of April 20, 1925, wherein the intervention of the Memphis Freight

Bureau is allowed, "Providing, however that the permission to intervene herein granted shall not be construed to allow intervenor to introduce evidence which will unduly burden the issues raised in the complaint." In other words, we do not understand from the Commission's order of March 16th that the Memphis adjustment is involved, as the Commission's language is very clear and positive.

As various carriers are directly interested in the cases now under review, such carriers have divided the presentation of their testimony and evidence, but it is the understanding that testimony entered by any carrier will go to the adjustment as a whole for account of all carriers, as such testimony has been prepared by individual repre- [fol. 653] sentatives of such carriers and is representative of the situation as a whole. My testimony will run to the Missouri situation.

There are located in the State of Missouri and directly adjoining three prime livestock markets in the order listed: National Stock Yards, Illinois, Kansas City Stock Yards, and St. Joseph Stock Yards. The St. Louis National Stock Yards located at National Stock Yards, Illinois, is the largest livestock market in or adjacent to the State of Missouri. A map which I have in my possession was issued by the St. Louis Stock Yards Company and indicates total shipment of horses and mules for the year 1924 of 65,601 head with total receipts for the same period of 64,012 head, as compared with shipments of cattle 618,680 head and receipts of cattle 1,034,446 head, and shipments of hogs 3,009,992 and receipts of hogs 4,579,538 head. This same report is segregated as to the Missouri Pacific, the shipments to the west from St. Louis for the entire year consisting of only 1,014 head of horses and mules, with 8,598 head of horses and mules received from the West. This is more than representative of all the railroads serving the National Stock Yards, as out of the 25 roads by which it is served, the Missouri Pacific ranks third; that is to say, the Burlington handled more horses and mules into National Stock Yards than did the Missouri Pacific, as did the Wabash from the West.

Exhibit B-137 is a photographic copy of page 25 of the 54th Annual Report of Kansas City Stock Yards Company for the year ended December 31, 1924, from which it

will be noted that the cars of horses and mules consisted of the least number of any other classes of livestock. There were only 3,263 cars in and out of Kansas City for the year 1924 via all railroads as compared with 133,145 cars [fol. 654] of cattle and calves or as compared with 44,490 cars of hogs. The percentage of the cars in and out of Kansas City for the year 1924, horses and mules versus cattle and calves, was 2.44, and of horses and mules versus hogs, it was 7.3.

Exhibit B-138 is a photographic copy of page 12 of the 32nd Annual Report of receipts and shipments of livestock at St. Joseph Stock Yards, South St. Joseph, Missouri, for the year ended December 31, 1924. In this exhibit the number of head is shown in the last column rather than the number of cars, so we will here have to deal with head instead of cars in order to secure a percentage proportion of horses and mules versus other kinds of ordinary livestock. Taking cattle and calves, the receipts and total shipments for the year 1924 amounted to 949,344 head against total receipts and total shipments of horses and mules of 21,743 head, horses and mules being only 2.23 percent of the amount of total receipts and shipments by railroads of cattle and calves. The total receipts and shipments by railroads of hogs for the same period was 2,857,039 head, the horses and mules being .76 percent of the total movement of hogs in and out of the St. Joseph Stock Yards for the year 1924, with respect to total yearly receipts, an examination particularly of the report rendered for the Kansas City Stock Yards Company is indicative of the fact that the law of supply and demand has more effect on horses and mules than on any other class of livestock. During the World War, that is, in 1915, 1916 and 1917, horses and mules were in great demand. At the close of the War the demand evidently slackened as all the country had been combed for these animals for shipment abroad and naturally the agricultural interest had to recoup its supply in order to follow out agricultural pursuits. There was a gradual falling-off of the receipts for the year 1918 to 1921, and shipments began to pick up in 1922 and 1923 although it seems that in 1924 they [fol. 655] again went off, which appears to be equally true of substantially all classes of livestock.

According to the Eighth Annual Report of the Missouri Pacific Railroad for the year 1924, as filed with the Commission, that line handled 27,555 tons of horses and mules, which was .08 percent of our total revenue tonnage for that year as compared with 208,383 tons of cattle and calves, which was 1.11 percent of our total revenue freight tonnage, or as compared with 289,423 tons of hogs, which represented a .79 percent of our total revenue freight tonnage. We believe these statistics are representative of the roads serving Kansas City, St. Joseph and St. Louis in that our company shows a close second and third in the total receipts for the year 1924 by railroads in the Kansas City market, we being exceeded only by the Union Pacific as first and by the C., B. and Q. as second to the extent of less than 1,000 head.

Our revenue on horses and mules for the year 1924 was $126,413.75, while on cattle and calves our revenue was $1,461,316.49 and on hogs $1,175,122.79. The revenue on horses and mules just quoted represented only .13 percent of our total freight revenue on all commodities for that year, while on cattle and calves the revenue just quoted represented 1.52 percent and on hogs 1.23 percent of our total freight revenue on all commodities. Our average loading on the 2,342 cars of horses and mules handled over our system was 11.77 tons per car, while our average loading on cattle and calves was 11.80 per car and on hogs it was 10.04 tons per car. Our average revenue on horses and mules was $53.98 per car, and on cattle and calves it was $42.24 and on hogs $40.77 per car. Our average revenue per loaded car-mile on horses and mules for [fol. 656] the year 1924 was 27.61 cents and on cattle and calves it was 20.12 cents and on hogs 20.93 cents.

While the figures I have just quoted are for our entire system, I believe they are absolutely representative of the territory involved in this case; while they also cover the states of Arkansas and Louisiana and a small portion of Oklahoma our principal horse and mule movement is within Missouri and Kansas, in which states the major portion of said animals are bred and raised. I believe these figures will also be representative of the other roads serving this general territory, having particular reference to the State of Missouri in which the Missouri Pacific has a total mileage of 2,175 south of the Missouri River. Our mileage

in the State of Kansas also involved in this hearing is 2,731.

The National Stock Yards was the ranking horse and mule market of the United States in 1923, 102,000 head having been received there during that year, while Fort Worth was second, having received 58,000 head and Kansas City was third, having received 43,000 head and St. Joseph only received 15,000 head. The number of head of horses and mules moving to the East St. Louis market, as well as to the Kansas City and St. Joseph markets was extremely heavy during the years 1915 to 1920, having fallen off to some extent during the year 1922 and picked up again in 1923, but not to the same extent as 1915 to 1920, or 1919. For example, in 1922 East St. Louis received in round numbers 95,000 head of horses and mules, with 102,000 head received in 1923; Kansas City received in 1922 about 38,000 head and in 1923 about 43,000; and at St. Joseph there was very little change, ranging in the neighborhood of 16,000 head.

The "Agricultural Outlook" for 1924 published by the [fol. 657] United States Department of Agriculture estimated the number of farm horses and mules on farms in the United States as of January 1, 1924, to be less than 90 per cent of the number on farms the five years previous. They also found that at 67 markets in the United States the receipts decreased from 1919 to a low point in 1921 and increased nearly 100 percent in 1923. They also have the following to say: "It is possible that a shortage of good horses will occur before many years and that the prices of horses will reach a higher level within the next few years. Although there appears to be a tendency in the larger cities to utilize horses for short hauls, there does not seem to be at present any marked increase in the general city demand for horses."

Now, a few words with respect to the manner of buying and selling horses and mules which is not prevalent in connection with other farm products and which will go to prove that the farmer is in no way benefitted to any degree by a reduction in freight rates with respect to the transportation of such animals.

Unlike other classes of ordinary livestock, horses and mules in these times are not raised in large droves and very seldom does one farmer even produce a carload of

such animals. Then the practice is that nearly every man engaged in the pursuit of agriculture raises a few head of horses and mules on his farm which in turn are purchased on the barter and sale plan by a prospective horse and mule dealer generally operating from some interior point such as Sedalia, Pleasant Hill, Lees Summit or more generally one of the prime markets such as National Stock Yards and Kansas City or St. Joseph Stock Yards. These buyers concentrate their purchases of horses and mules at some local stable or yard or both until a carload shipment has been gathered. They then ship the stock to the [fol. 658] markets or to the large horse and mule buyers in the cities just mentioned who dispose of such stock either by the head or in pairs, or sometimes forward them to other markets in the Southeast or to the Atlantic Seaboard for exportation, a goodly number of such animals moving to Algiers and the North Coast of Africa.

From this manner of handling it can be seen that the farmer has really nothing to do with the freight rates assessed, as the speculator or commission merchant handling the stock is the one who generally pays the freight charges and adds such charges to his sale price in disposing of the stock to the large horse and mule buyers at the prime markets. He in turn disposes of the stock to other interests, adding on his profit, etc. The freight charges on an average head of horses and mules from Kansas City to St. Louis National Stock Yards is about $3.00, and this charge is substantially nil in the barter and sale of such stock, as there is really no set price on the horse and mule market as there is on cattle, calves, hogs, sheep, etc., which sell for the most part on weight and on the qualifications as to being grass or cornfed and the condition or class of such stock, that is, short horn or otherwise versus Jersey stock, whereas the only distinction in horses and mules generally is the number of hands high, their age, the mating-up or pairing-off, etc.

This condition does not exist in the handling of other classes of livestock, as nearly every livestock dealer in Missouri, Kansas, and even Colorado produces in one year's time, or if he does not produce he buys, one or more carloads of hogs and steers, and makes the shipments himself to some commission merchant at the prime markets, and as the stock is sold generally to a packer, the shipper

[fol. 659] has to stand the freight charges, commission charges, and substantially all expenses of transportation of the stock from the point of shipment to ultimate destination.

With respect to the rate situation, the basis for the present day rates on horses and mules, especially from points in Missouri to East St. Louis and National Stock Yards, is as per report and order in I. C. C. Docket No. 9131, complaint of the Dimmitt-Caudle-Smith Livestock Commission Company, reported in 47 I. C. C. 257, decided in November, 1917. Prior to about July 12, 1913, the rates on livestock, in carloads, from points in Missouri to St. Louis, Mo., on the one hand, and East St. Louis and National Stock Yards, Ill., on the other, were by any particular line the same from points over 200 miles distant and approximately the same from points between 100 and 200 miles distant, although not the same from points within an average radius of approximately 100 miles, from which latter points the rates to East St. Louis were higher than the rates to St. Louis. On or about the above date the railroads, in obedience to an act of the General Assembly of Missouri, reduced the rates from practically all points in the state to St. Louis. No changes were made in the rates to East St. Louis nor to St. Louis applicable on interstate traffic. The reductions in interstate rates had the effect of condemning the differences between the rates to St. Louis and East St. Louis and of creating differences where none had before existed, thereby disturbing a long-established adjustment.

In 1916 Docket No. 9131 was filed attacking the rates on livestock, including horses and mules, from all points [fol. 660] in Missouri to St. Louis and National Stock Yards. This complaint was due primarily to the intrastate rates, which were based on a Missouri statute and which were published by the carriers under protest in obedience to an act of the General Assembly of Missouri. It might be well to state that prior thereto the intrastate rates were attacked as confiscatory in the United States District Court and an injunction was secured against their application. Upon appeal to the Supreme Court of the United States, however, that body held the proof insufficient to support the judgment of the lower court. The carriers then applied to the Public Service Commission of

Missouri for and were granted an increase in the intrastate rates, but the increased rates were held in abeyance by a certiorari proceeding in the Supreme Court of Missouri.

In April, 1917, the Supreme Court of Missouri handed down its decision in the certiorari proceeding, the only question raised therein being the power of the Public Service Commission to prescribe rates in excess of the maximum standard previously fixed by the General Assembly, and the Court held that the Commission had that power. The effect of the decision was to make effective the rates prescribed by the Public Service Commission. The carriers then filed tariffs increasing the state rates to the basis of the new standard and those rates became effective July 15, 1917. While they were higher on the whole than the former statutory rates to St. Louis, they were considerably lower than the rates to East St. Louis or to St. Louis applicable on interstate traffic and the complaint covered by I. C. C. 9131 was directed against the reasonableness, per se, of the rates to East St. Louis and against the maintenance of any difference between the rates and rules to St. Louis versus East St. Louis.

[fol. 661] As a result of the decision in the case being discussed the Commission in the final analysis established a mileage scale of rates from points in Missouri to East St. Louis and National Stock Yards, Ill., these on cattle and calves, and established a basis of rates on hogs, single deck, and on horses and mules of 120 percent, and on sheep, single deck, of 125 percent of cattle and calves basis. Also, in view of the peculiar trans-Mississippi River situation, they permitted the carriers to add a charge of $2.50 per car for delivery to the Stock yards or packing houses, and this is substantially the basis in effect to-day, as increased by General Order 28 and Ex Parte 74 and the reductions of 1922.

Exhibit 139 is a photographic copy of a map of the southern portion of Missouri and also the eastern portion of Kansas and Oklahoma and the northern portion of Arkansas. This is principally a map of the Missouri Pacific Railroad, the heavy white line being the rails on that road. The smaller white line as crossed is the route of the C., R. I. & P. Railroad, which separates group "A" from group "B" territory in the State of Missouri, which will be commented upon later. The points from which my territory portrayal is drawn can be easily located on this map.

Exhibit B-140 is a statement of rates on horses and mules from representative points on shipments throughout southern Missouri, as involved in this complaint, and also from the larger markets of Kansas City and St. Joseph to St. Louis National Stock Yards and Kansas City, indicating first the mileage of the Missouri Pacific, next short-line mileage, next rates applicable on state and interstate traffic, and last the per car mile revenue based on a standard car of 36 feet. This statement is self-explanatory. The [fol. 662] state and interstate rates on that exhibit are one and the same in view of the Commission's decision in Docket No. 9131; in other words, that is a compromise basis applicable on both state and interstate traffic. There appears to be one exception to the foregoing in that from Springfield to St. Louis the state rate is 31 cents and the interstate rate is 42. The exhibit was first drawn to show the mileage of the Missouri Pacific from Springfield, which is the long mileage. I had them put in the rate via the Frisco, as the car-mile earnings are based on the rate and short-line mileage of the Frisco so far as Springfield is concerned.

Exhibit B-131 is a statement of rates on cattle and hogs from representative points on shipments in the State of Missouri, including the large public stock yards of Kansas City and St. Joseph to National Stock Yards, Illinois, showing the rates on cattle, single deck, and hogs, double deck, first indicating the mileage of the Missouri Pacific, next the short-line, next the rate, and last the revenue per car-mile based on a standard car of 36 feet, inside measurements, plus a $3.00 per car charge, which is no more nor less than the $2.50 charge allowed in the Dimitt-Caudle-Smith case brought down to date. In figuring the per car revenue on this ordinary livestock the $3.00 per car charge was not taken into consideration.

It is our contention in connection with these rates on cattle and hogs that they are on entirely too low a basis and it is our thought that, even by the use of 120 percent of such rates to be applied on horses and mules, that is not unreasonable from a carrier's standpoint. In the first instance, cattle and calves are purely a farm product, the [fol. 663] freight rates being substantially stood in all instances by the original shipper, that is to say, the farmer. The movement on cattle, hogs, sheep, etc., is extremely heavy, there being absolutely no comparison of the movement of horses and mules with that class of traffic. There

is no competitive feature as between horses and mules in comparison with edible livestock, by which I mean that horses and mules in no way compete with hogs, cattle and sheep.

Exhibit B-142 portrays a statement of rates on wheat, corn and oats, packing-house products and fresh meats, which move in volume not to be compared with the movement of horses and mules from Kansas City and St. Joseph to St. Louis, and from country points; that is, on grain to both the St. Louis and Kansas City markets for account of the Missouri Pacific system for the year 1924, that being a large grain road, the wheat movement over our rails consisted of 4.51 percent of our total revenue charged and the corn movement consisted of 2.42 percent, the oats movement of 1.52 percent and the fresh meats and packing house products movement of .71 percent, this as compared with the horse and mule movement of only .13 percent.

We have shown in this statement packing-house products and fresh meats from Kansas City and St. Joseph to St. Louis, the same rates being applicable to East St. Louis. There is naturally no movement from the country points selected, but the figures shown from country points on grain represent the actual figures on shipments being made substantially throughout the year, and in this connection we have also shown the actual car-mile earnings based on average loading for our system for the year 1924. Attention is called to the car-mile earning of 25 cents on horses and mules as compared with 52 cents on the flat wheat rate, 36 cents on the proportional wheat rate from Kansas City and [fol. 664] from St. Joseph of 27 cents on horses and mules as compared with 42 cents on wheat based on the flat rate and 29 cents based on the proportional rate, and on packing-house products of 31 cents as compared with 25 cents on horses and mules. Taking a representative country point and showing only one example, Sedalia, for instance, the car-mile revenue on wheat to St. Louis is 68 cents as against 32 cents on horses and mules. It would certainly seem from a comparison of this nature that horses and mules are not standing their pro rata share of the cost of operation, as now under review in I. C. C. Docket No. 17000.

Commissioner Greenleaf: Mr. Clark, do you have any exhibits showing the ton-mile earnings?

The Witness: No, sir; we do not believe that per ton-mile earnings is fair earnings on horses and mules on account of the light loading. The per car-mile earnings is always fair in any case because it represents the actual revenue derived on the entire shipment.

Commissioner Smith: Dressed meat is still lighter than horses and mules.

The Witness: It will show up in the per car-mlie earnings, while it won't show up in the per ton-mile earnings. That is true of any commodity you can mention.

Exhibit B-143 shows the rates on actual moving commodities to St. Louis and East St. Louis from country points at which such commodities are produced, that is, dairy products of all kinds, grain, ordinary livestock, and potatoes, and here again we have used the average loading for our system for the year 1924 in arriving at the revenue per [fol. 665] car-mile. With the exception of the revenue on cattle and hogs, not a single commodity, and we have taken substantially all the commodities which move in volume, will be found that is anything like as low as the revenue we obtain on horses and mules. Taking Sedalia, the revenue on horses and mules to St. Louis is 30 cents per car mile, while on live poultry it is 123.8 cents, on dressed poultry 61.9 cents, on butter and eggs 61.9 cents, on wheat 68.7 cents, on corn 56 cents, on oats 49.4 cents, on cattle 28 cents, on hogs (double deck) 28 cents, and no potatoes 45.9 cents; so certainly it would again seem as if rates on horses and mules are on too low a basis to-day and that other classes of traffic are standing the shrinkage. I mean they are low in this western trunk-line and northern territory; that also includes Nebraska and South Dakota.

In Exhibit B-144 we have taken substantially every commodity that moves in volume from St. Louis westbound to Kansas City and St. Joseph, as well as to the country jobbing points, jobbers of some consequence being located at every point shown with the possible exception of Lees Summit and Lamar, and in preparation of this exhibit we have been most fair in that we have used only the minimum weight on such commodities and have shown the car-mile revenue based thereon. From a single glance at the car-mile revenue derived from this class of traffic, which was selected not from a rate standpoint but from an actual

movement jobbing standpoint in carload lots, it would seem as if there is something wrong with the horse and mule adjustment.

Exhibit B-145 is taken from an actual average shipment of horses and mules from Kansas City Stock Yards to East St. Louis National Stock Yards, and in order to show the [fol. 666] costly nature of handling a shipment of this character from a transportation standpoint we have portrayed the various absorptions which the carriers make, did make and do make on every car that moves from Kansas City to National Stock Yards, and it will be noted in the final analysis that, while the rate at present in effect of 30.5 cents would seem to indicate, based on short-line mileage, that we receive 25 cents per car-mile, in reality we only receive 19.5 cents per car-mile and where the stock is destined beyond National Stock Yards or where the combination rates are assessed and the tariff is brought into use our car-mile revenue is even less. When originating on lines other than the Missouri Pacific at Kansas City we receive only 17 cents per car-mile. Outside of ordinary livestock (edible) I know of no commodity offhand which nets us less and on which the absorptions are so heavy as the handling of horses and mules, including other classes of livestock. Compare these per car-mile earnings with the per car-mile earnings shown in our other exhibits on actual moving commodities and you will find them to be substantially less than one-half.

Exhibit B-146 is a statement showing rates on horses and mules from various points to Kansas City as compared with various rates prescribed by this Commission for equal distances. I call particular attention to what the carriers are actually receiving throughout central freight association territory on this class of traffic, rates which have been promulgated by this Commission and which move a large part of the traffic. I also call attention to the southeastern scale, also promulgated by this Commission, in which territory it has been recognized in several instances that the rates should be on a very much lower basis than the rates in southwestern territory and even than in western trunk-[fol. 667] line territory. The last scale of rates shown in this exhibit, reported in 89 I. C. C. 22, was promulgated by this Commission to apply from the Missouri River through the State of Kansas and the Southwest.

Exhibit B-147 is a similar statement by the use of the same scales, except that we have shown as the destination the National Stock Yards, Illinois.

Exhibit B-148 is a statement of the present day rates on cattle and calves applicable in central freight association territory, the present day rates applicable on horses and mules in the same territory and the percentage relations which the horse and mule rates bear to the cattle and calves rates. These are Commission-made rates and apply throughout a large territory and move volumes of traffic.

Exhibit B-149 is a statement showing the percentage relationship between the rates on cattle in southwestern territory and the rates on horses and mules prescribed in the instant case, No. 12358. I did not give the citation of those central freight association decisions but I gave the tariff references where the rates are published.

As to when the Commission set rates on horses and mules in c. f. a. territory, it was about two years ago, as I recall.

I call attention to the present cattle rate scale applying in southwestern territory and the 12358 scale which is now in effect in that territory and the percentage relationship, also the percentage relationship of 120 percent of horses and mules over cattle which the Commission prescribed in western trunk-line territory. You will note that even by the application of the scale which the carriers are seeking the Commission to extend into western trunk-line territory, it does not in a goodly number of instances even run out as high as 120 percent.

[fol. 668] A great deal has been put into the testimony here with respect to the numerous advances which the 12358 scale will mean in this territory if promulgated. It is our contention that that scale is no more nor less than a leveling-out process, as disclosed by Exhibit B-150 which shows the serious reductions which the carriers had to accept in southwestern territory under the Commission's order in Docket No. 12358; otherwise, the exhibit is self-explanatory.

Exhibit B-151 is a distance tariff scale of mileages, 5 to 300 miles, in the state here under review as compared with other states to show the different state adjustments and the interstate adjustments on livestock, that is, horses and mules, cattle and hogs. If it were not for the decision in the Dimmitt-Caudle-Smith case making the interstate rates

and the state rates one and the same, these would be the distance tariff rates applicable. In other words, the rates from Kansas City to St. Louis would be in the neighborhood of 40 cents per 100 pounds, and not 30.5 cents that is in effect to-day, but as it is these rates only alternate with the specific scales published on state and interstate traffic in Missouri, and are only filed as a matter of information.

Having in mind that Memphis has intervened in this case, I have prepared an exhibit of horses and mules as compared with other classes of livestock from the same points in Missouri shown on our other exhibits, as well as from Wichita, first to the National Stock Yards, next to Chicago, which rates are operative to Union Stock Yards, and last to Memphis, showing the short-line mileage and the car-mile revenue throughout. The only commodities involved in this case are horses and mules. In her intervening petition Memphis seeks the same scale or basis of rates provided to [fol. 669] St. Louis, and it will be noted that horses and mules from Kansas City to National Stock Yards are to-day paying a car-mile revenue of 25 cents while Memphis receives the benefit of 22 cents car-mile revenue.

On the other hand, Wichita is 6.4 cents per car-mile higher revenue to Memphis than is Kansas City, as compared with National Stock Yards. This is due to the fact, however, that the 64.5-cent rate shown is the new adjustment under this readjustment case, which became effective April 20, 1925, whereas the rate from Wichita to National Stock Yards has not yet been lined up, that being what we are attempting to do here to-day. The old rate from Wichita to Memphis was $119.00 per standard car of 23,000 pounds, or about 52 cents per 100 pounds. On this western traffic Memphis has always been treated as a southwestern adjustment by reason of the fact that the rate-making lines, the Frisco and the Missouri Pacific, as well as the Rock Island, operate a greater percentage of their mileage in reaching Memphis from Wichita through southwestern territory; and it is for that reason we stated in our opening testimony that Memphis should have no standing in court at this time.

For comparative purposes only we have shown Chicago on this statement, and we have no hesitancy in stating that if the Commission permits the 12358 scale that has been established throughout the entire Southwest and to the

Southwest and the larger markets of Kansas City, St. Joseph and St. Louis to become operative in Missouri, Kansas and Colorado, it will no doubt be used as a precedent at least in establishing a standard line of rates on horses and mules throughout western trunk-line territory, including Chicago. Our feeling is that it is a very constructive [fol. 670] scale and while all southwestern lines secured numerous reductions under that scale, if any advances are secured by operating the scale in the territory now involved, it is only by reason of the fact and due to the fact that the rates in the territory now involved are on too low a plane to-day and should be properly advanced to share and share alike the uniform cost of operation throughout the territory as a whole, and especially by reason of the fact that a goodly portion of the territory is directly intermediate between the southwestern territory and the large prime markets of St. Louis and Kansas City.

Having in mind that southern Missouri is involved in this proceeding it might be well to call attention to I. & S. Docket 2247, involving class rates between Missouri and interstate points, and Public Service Commission of Missouri I. & S. Docket No. 4111 and Public Utilties Commission of Kansas Docket No. 1669, all of which were heard in a joint proceeding at Kansas City on December 16-20, 1924, before an Examiner of this Commission and representatives of the Public Service Commission of Missouri and the Public Service Commission of Kansas.

We feel it is relevant to this proceeding to give a brief outline of the matters involved in the dockets just mentioned, due to the fact that whatever adjustment is finally worked out will no doubt have a direct bearing on the entire commodity list, although we see no reason why that should be true in connection with the horse and mule rates involved, as they are now in a general readjustment of the entire Southwest and the territory involved, Colorado, Kansas and southern Missouri being directly contiguous or intermediate to the large prime markets of National Stock Yards, Kansas City and St. Joseph Stock Yards, Wichita [fol. 671] Stock Yards, and even Union Stock Yards, Denver, Colorado, and we see no reason why any adjustment, especially on the mileage basis obtaining in Arkansas, Oklahoma, Louisiana and Texas, could not be applied with equal

force to the territory of Colorado, Kansas and southern Missouri, especially southern Missouri.

Missouri is divided into two territories, "A" and "B", "B" territory being known as southern Missouri and is described in current tariffs as that portion of the State south of the Missouri Pacific railroad between St. Louis and Kansas City passing through Junction City, Sedalia and Pleasant Hill. "A" territory is north of the line of "B" territory just described; since the C., R. I. & P. operated between St. Louis and Kansas City that line became the boundary line between "A" and "B" territories. The carriers have suggested a new boundary line making the new "B" territory that part of Missouri south of the Missouri Pacific from St. Louis to Labadie, thence south of the line of the Rock Island from Labadie west across the State of Texas to where the Rock Island crosses the M.-K.-T. Just west of Holden and east of Pleasant Hill, and thence south of the M.-K.-T. through Harrisonville to Westline and the Missouri-Kansas border. The Frisco railroad desires to include in "B" territory the balance of its line in Missouri, that is, the Frisco stations in Missouri, Sheffield to Harrisonville, and all stations on the former Kansas City, Clinton and Southern line, now a part of the Frisco north of Harrisonville. The K. C. S. desires to include in this same "B" territory its stations Westline and north.

This division of Missouri into schedule "A" and schedule "B" territories was made by the old Board of Railroad & Warehouse Commissioners and it was the intention of the carriers in connection with the rates under review in I. & S. [fol. 672] Docket 2247 to establish a basis of rates that would be uniform for both interstate and intrastate application. The Missouri carriers for a number of years have been receiving complaints regarding the rate adjustment in effect instrastate and interstate in Missouri "B" territory, due to the fact that at present there is no uniform class rate scale in effect. In Memphis-Southwestern Investigation, 55 I. C. C. 515, this Commission prescribed a scale of rates know as 9702 scale for application from St. Louis to what is termed southeastern Missouri, that is, the territory on and south of the line of the Frisco from Cape Girardeau through Mingo to but not including Springfield. In the Missouri territory north of Cape Girardeau there is in effect at pres-

ent what is termed the Missouri Railroad & Warehouse Commission scale. From St. Louis via the route of the Frisco toward Springfield, there is a line of rates in effect lower than the Missouri Railroad & Warehouse scale.

The chief contention of complainants in the past years, however, since the promulgation of Docket No. 9702, is of the rate adjustments in effect from Kansas City versus St. Louis into what is know as 9702 territory. There was and is another cause which the carriers were strictly up against in readjusting the rates in the territory in southern Missouri and north of the 9702 line, especially the Frisco Railroad, which operates wholly in "B" territory; that is to say, in effect in Missouri there is a constitutional provision enacted in 1875 which is termed the long-and-short-haul clause of section 12 of the Missouri Constitution, which reads: "It shall not be lawful in this state for any railway company to charge for freight or passengers a greater amount for the transportation of the same for a less distance than the amount charged for any greater distance; [fol. 673] a suitable law shall be passed by the General Assembly to enforce this provision."

This left a maladjustment as between the southern portion of the State of Missouri, that is, the 9702 portion, and group "B" territory and group "A" territory, and especially to and from the larger prime markets of Kansas City and St. Louis, such markets being located in group "A" territory, and in Memphis-Southwestern Investigation, 55 I. C. C. 515, the Commission said:

"The question here involved is whether the Memphis scale should apply throughout Arkansas, Oklahoma and southern Missouri. Southern Missouri, as the expression is used in this report, refers to what is know as "B" territory, being the portion of the State, roughly speaking, lying south of the Missouri River. The conclusion is difficult to escape that the differences in transportation conditions generally are not suffiently marked to necessitate or warrant different levels of class rates in the general region here involved. Considering all the facts together a uniform scale of rates could with propriety be applied throughout southern Missouri, Oklahoma, Arkansas, Louisiana, and common-point territory in Texas. The evidence indicates that Ar-

kansas and Oklahoma and southern Missouri are a homogeneous rate region and that transportation conditions would seem to dictate in general the observance therein of a uniform distance scale."

The respondents are of the opinion that there are no transportation or traffic conditions warranting the application in Missouri "B" territory of a scale lower than the 9702 class rate scale prescribed by the Commission from St. Louis and Cairo to southeastern Missouri, Arkansas, Louisiana, and from Missouri "B" territory to Oklahoma and Arkansas for 350 miles and less. There was a condition beyond the control of these respondents, however, which made it impracticable for them to establish the 9702 scale, [fol. 674] to wit, the effect upon the rates between the rivers, that is, from St. Louis to Kansas City.

Furthermore, the western trunk lines controlling the rate adjustment between the Missouri and Mississippi rivers could not be induced to revise their class rates from St. Louis to Kansas City and other Missouri River crossings and if the carriers had applied the 9702 scale in "B" territory the present St. Louis-Kansas City rates would cut a great many of the rates in southwestern Missouri and from St. Louis to southwestern Missouri. If it were possible to have published the 9702 class scale between St. Louis and Kansas City a uniform adustment would have been produced. As a final analysis, however, the railroads in southern Missouri decided to apply in this "B" territory a buffer scale, which was shown in witness Lincoln's Exhibit 48, Docket No. 13535, such scale to be applied between the higher-rated 9702 territory south of the "B" territory and the lower-rated territory in northern Missouri and western trunk-line territory.

It was the thought of the carriers that the 9702 scale was the proper basis to apply throughout the territory. The scale under suspension was promulgated in the following manner. The first-class rate under the 9702 scale and the first-class rate under the Missouri River cities—Nebraska or the so-called Clark scale were added together and then divided by 2 to obtain an average. From the scale thus resulting the remaining classes were related on the percentage relationship established in the Clark scale, taking into consideration, of course, General Order 28, Ex Parte 74

and the general reductions of 1922. This case has been submitted and is now in the hands of this Commission.
[fol. 675] It might not be amiss in passing to call attention to this southern Missouri territory versus northern Missouri. The freight density per mile of road in "A" territory is 1,452,116 tons, while in "B" territory it is 896,896 tons; in other words, the density in group "B" is only 61.76 percent of the density in group "A". The average corn acreage per square mile in group "A" is 123½ acres and in group "B" it is 61.8 acres, the acreage on corn per square mile in "B" territory being therefore 50 percent of that in "A" territory. The acreage of wheat per square mile in "B" territory is 66 percent of the acreage per square mile in "A" territory. For the total in cultivated crops the acres per square mile in "A" territory amount to 284.7 while in "B" territory they amount to 174.9; the acreage per square mile on all cultivated crops in "B" territory is only 61 percent of that in "A" territory. For land in cultivation the average acreage per square mile in "A" territory is 45.5 and in "B" territory it is 133 and transposed to percentages it indicates that all other known cultivated land in "B" territory amounts to 292 percent of all other known cultivated lands in "A" territory.

This Commission has held in several instances that the 9702 class scale is proper to and within Missouri "B" territory, this in the Memphis-Southwestern Investigation, 55 I. C. C. 515, also in the I. & S. Docket No. 1269, extension of that case reported in 62 I. C. C. 596, etc., and it is our position and contention that if a scale of rates, either class or commodity, is reasonable for 9702 territory it is certainly reasonable for application in the southern part of Missouri; and as this Commission has instructed after a thorough investigation, the publication of a distance scale of rates on horses and mules in 9702 territory we [fol. 676] see no good and sufficient reason why this scale should not properly apply to southern Missouri territory, especially in line with its holdings in other cases, some of which I have cited and some I have not.

Horses and mules, like other classes of livestock, are permitted to be accompanied by caretakers on free transportation to the following extent: first, with one car of

livestock transported one way from point of origin to destination free transportation will be granted to the owner or his bona fide employee who will accompany said stock as care-taker; second, when two to ten cars of livestock are shipped to the same destination by the same owner, transportation to destination and return will be granted to the owner of the stock or his bona fide employee who will accompany said stock as attendant or care-taker.

On horses and mules, like other classes of livestock, in carloads, destined to public stock yards, same will be unloaded into suitable pens at such stock yards by the carriers. Likewise, same will be loaded for shipment from public stock yards from such pens by the carriers. These are also privileges not attending other classes of carload freight and the cost of transportation is thereby added to. I have not as yet compiled the information for the year 1924 showing the number of care-takers accompanying shipments of horses and mules, but for the year 1923 we handled 200 persons. They traversed a total mileage of 58,864 and the value of this service as rendered from a passenger standpoint and charged off to the operating costs of handling such livestock was $1,941.76.

[fol. 677] Our personal injury claims paid to date for the year 1924 by reason of the handling of care-takers as a whole, that is, horses and mules and all other classes of livestock, was $2,957.00. I have not this information segregated with respect to the horse and mule care-takers, but I will state that, considering the number of cars moved of horses and mules versus the number of cars of other livestock, the percentage of care-takers accompanying horse and mule shipments is much larger than that of those accompanying other movements of ordinary livestock.

Our claim payments on carload shipments of livestock for the year 1924 amounted to $147,052, or 18.5 percent of our total claim payments on all commodities for the year, which were in the neighborhood of $800,000.00. For the year 1923 our claims paid on livestock amounted to $151,052. A good portion of this amount was due to delays in the handling of such stock, which goes only to emphasize the fact that same must be handled under expedited service. In other words, livestock must be accorded scheduled movement, handled with extreme care and placed at the head-end of trains, as delays on livestock

almost invariably result in large claims, and this extra care and switching necessary to properly place the stock in trains adds to the cost of handling and thereby the cost of operation of such trains.

Claims for damages in the handling of horses and mules over our system for the year 1924 indicate that about 50 claims were filed averaging in the nature of $100.00 per claim payment, about $5,000.00 for the year, or approximately 3.4 percent of our total payment of claims on livestock. Taking into consideration the number of cars of ordinary livestock other than horses and mules handled by our company for the year 1924, this is rather a large percentage. It is our understanding that the major por- [fol. 678] tion of these claims were filed by reason of chafing, scratching, etc.

We have made a rather thorough test of the livestock car movement in and out of Kansas City and St. Louis, St. Louis being representative of the National Stock Yards situation in that respect, and for the purpose of making an actual test we selected a representative month, October, 1924, and found that the loaded and empty mileage made by livestock movement in and out of St. Louis for that month over the rails of the Missouri Pacific was as follows: Loaded in, 300,147; loaded out, 10,039; empty in, 1,998; empty out, 252,096; comparison of empty in to loaded in miles, .67 percent; comparison of empty to loaded miles out of St. Louis, 2511.17 percent.

We also had a study made for account of our system for the same month and find that on livestock equipment, all kinds, we move in the direction of North or East, 1,418,669 loaded miles, while we handled empty 166,003 miles, the empty to the loaded haul being 11.7 percent; South or West we handled 233,601 loaded miles and 1,293,521 empty miles, the empty to the loaded miles being 553.73 percent.

The above we believe is indicative of the loaded versus the empty movement in this general territory and was taken for a representative month by making an accurate test for our road in that month, which showed beyond the shadow of a doubt the large empty car mileage on livestock equipment which it is necessary to operate to take care of the livestock traffic and which is not present in the handling of other classes of freight, which moves for the

most part in other classes of equipment. The figures I have given relate to all livestock.

[fol. 679] Horses and mules, carload, are handled altogether in what are known as redball trains, the trains are given expedited service over other classes of freight trains. The Missouri Pacific, like other trunk-line carriers, gives the movement of livestock what might be termed preferred or expedited service. For example, we have three redball trains operating between Kansas City and St. Louis. Train No. 60 departs from Kansas City at 5:30 P. M. and arrives at St. Louis at 9 A. M. the following morning, consuming 15 hours and 30 minutes during the run.

Train No. 62 departs from Kansas City at 12:01 P. M. and arrives at St. Louis at 5 A. M. the following morning, consuming 16 hours and 59 minutes in making the run. These trains are known as second-class trains, the first class trains being passenger trains. In comparison with this expedited service, take train No. 84, a third class train which leaves Kansas City at 5:30 A. M. and arrives at St. Louis at 5:45 A. M. the following morning, consuming 24 hours and 15 minutes in making the run.

Train No. 60 is the fastest scheduled freight train on the Missouri Pacific, carrying less tonnage than our other trains for the express purpose of expediting service to St. Louis and points beyond. This train is known as our Special Stock Train and substantially all of our livestock between Kansas City and St. Joseph and St. Louis or East St. Louis is handled therein. Needless to say expedited service in connection with any freight train service means additional expense. Here it will be noted that our tonnage is 20 percent lighter in such instances, not taking into consideration the many other features of added expense in operation.

Summing up this case from the carriers' standpoint, or at least from the standpoint of myself as a witness in [fol. 680] the original case and after listening to the testimony of petitioners and intervenors at this hearing, it is our opinion that no new testimony or evidence has been entered, especially with respect to rate comparisons and statistics, other than that entered at the former case; that is to say, complainants' whole case has been made with respect to comparison of rates in Nebraska and South Dakota, and to bear this out we call attention to the Com-

mission's report and order in No. 12358, page 494, in which the South Dakota scale was used, and to page 493, in which the Shreveport scale was before the Commission, and to page 489, the Nebraska scale. In fact, the Commission featured all these scales in comparison in its report.

Livestock rates have always been considered on too low a plane, not only in southwestern territory but in western trunk-line territory, and it is our thought that the Commission, while giving us numerous reductions in our rates in southwestern territory, should substantiate this scale for application in western trunk-line territory here involved, regardless of whether or not lower rates are at present in effect to the north thereof. This same bugaboo has been raised each time the southwestern carriers attempted to adjust any of their rates as between southwestern territory and Kansas or western trunkline territory, citation being made of the fact that to the North, or in Nebraska, lower rates were maintained. In his recent tentative report in Docket Nos. 13535 and 14880, Examiner Disque stressed this point, and if it had not been, and he so states in his report of this situation, and had this not also been equally true at the time of the Commission's decision in Docket No. 9702, no doubt the Commission ere this would have promulgated a uniform scale for application throughout the territories.

[fol. 681] In this connection, attention is called to a recent hearing and order of the Commission in a large cement case involving the rates from all producing points in the State of Kansas into southwestern territory, that is, into the State of Oklahoma, in which case the Commission had before it numerous exhibits pertaining to the density of traffic and in which case the Oklahoma Corporation Commission substantially proved, or at least presumably so, that the density of traffic in the eastern portion of Oklahoma equalled that in the eastern portion of Kansas and in the western portion of Kansas. As a result thereof, the Commission promulgated the western trunk-line scale, that is, scale III of Docket No. 8182 as brought to date, for joint application between the eastern portions of Kansas and Oklahoma, and scale IV for joint application between the western portions of Kansas and Oklahoma. The citation to that is 87 I. C. C. 451.

The Kansas cement interests have now filed a petition with the Commission asking that this scale III line of rates on cement be promulgated throughout Arkansas and Louisiana, including Mississippi River crossings, Memphis to New Orleans, inclusive. Certainly it would seem if an adjustment of this nature on cement is reasonable, that a like adjustment in the rates on livestock, possibly through the south of Kansas and southern Missouri to reach the primary markets of St. Louis, Kansas City and St. Joseph from the entire southwest, would be a reasonable scale to apply from and to points in that territory. The only exception that has been made recently that is tentative to a uniform scale is that of a buffer scale proposed by the carriers in Docket No. 2247 and by Examiner Disque, and this only for the reason indicated in their reports on account of the lower rates being maintained in Nebraska and Iowa.

[fol. 682] It might be well to call attention to the fact that in Docket No. 9702, one of the most exhaustive investigations ever held by the Commission, which lasted over a period of years, on page 595 of the report therein and again reported in the instant case on page 493 of Volume 93 and substantially as follows: One of those scales, commodity scale 12, 77 I. C. C. 995, with slight modification, appears to afford a consistent and reasonable basis for the statement of reasonable rates applicable to the interstate shipment of horses and mules in the Southwest; and it seems as if their judgment still holds good in the instant report and order.

While as previously stated the southwestern carriers received numerous reductions by reason of the promulgation of the Commission's order in No. 12358, at the same time we feel that it is one of the most just and reasonable scales promulgated by that body in recent years by reason of the fact that it took recognition of all of the various transportation conditions surrounding the movement of horses and mules throughout southwestern territory. It did away with the Shreveport scale, which scale after all was [nothing] more nor less than a discriminattion scale, the Commission taking at that time a scale found to exist in Texas on intrastate traffic and promulgating it on interstate traffic to remove discriminations complained of by the Shreveport interests. It has done away with the pro-

mulgation of that 9702 scale in so far as the horse and mule adjustment is concerned, and in one general scheme of rates has leveled-out the entire territory. It is true that certain advances will result by reason of the promulgation of this scale in the territory here involved, which only goes to show and prove, as we believe we have al- [fol. 683] ready done, that these rates have been and are on far too law a plane as compared with rates in other territories, eliminating possibly South Dakota and Nebraska.

About 20 to 24 head of horses and mules are usually loaded in a standard stock car. I have made an investigation of the value of horses and mules as of May 11th, this year, and give the following native horse quotations on that day at East St. Louis: A good to choice grass, $150.00 to $200.00 a head; medium to good grass, $100.00 to $150.00 a head; good to choice chunk, $75.00 to $100.00 a head; medium good chunk, $50.00 to $75.00 a head. The quotations on mules follow: draft mules 16 to 17 hands high, $175.00 to $225.00 a head; sugar mules 16 to 16.2 hands high, $150.00 to $190.00; mine mules 15 to 15.2 hands high, $125.00 to $150.00. As to what that 15.2 means, they are quoted in decimal 2; they generally speak of whole numbers or half numbers in measuring horses and mules. I understand a hand is about 8 inches.

By Mr. Larimore:

Q. In measuring hands, a hand is 4 inches.
A. I grant that; I stand corrected.

Commissioner Greenleaf: Would not 4 inches to the hand be better; and that one or two means 2 inches, 2 inches instead of .2 inches?

The Witness: I am testifying from a published report, and I don't know whether it is correct or not; like a lot of other values, we have to take the values as we hear them expressed. We simply got this from the market reports; I was not over there and saw the sales made.

Mr. Larimore: It is my understanding that these market reports are generally pretty good information, and if [fol. 684] you have reason to say they are not, I would like to hear the reason for that.

Commissioner Hussey: Very often they vary a great deal and are a long way from the real market value of the animals. We all appreciate that.

The Witness: I would like to state that these market reports are given out by our leading newspapers at 4 o'clock, which advice goes to the farmer and that is the only knowledge he has of the general value he can get for his livestock. They are also given out by radio.

Based on that market report for that day, the average price would be about $150.00, on which basis the value of a car of mules would be around $3,750.00. Taking May 11th as a date, the price of steers in the National Stock Yards ranged from $7.25 per hundred for common kind to $10.75 for the best available marketed. Beef cattle are generally marketed at the age of around 4 years, and the average weight of a steer on the market right now ranges in the National Stock Yards in the neighborhood of 800 pounds per head. About 30 head load in a standard 36-ft. car and based on the market value of steers at East St. Louis as of May 11th, the value of a carload of 30 steers would be about $2,160.00, using the value of $72.00 per steer. Based on a price of $150.00 per mule, the value of a car of mules on the same date would be about $3,600.00, or $1,500.00 in excess of the value of a carload of average steers from the market quoted.

The rate of return on the property investment of the Missouri Pacific Railroad for the year 1924 was 3.67 per cent. It is my opinion that the scale of distance tariff rates prescribed in Docket No. 12358 should be applied in the territory of Colorado here involved and in Kansas and southern Missouri; I think it should be made a uniform scale throughout the whole territory. In the transporta- [fol. 685] tion of horses and mules and cattle, horses and mules are the more liable to injury in transit.

I have listened to the testimony of those present here. The Missouri Pacific and the other railroads present here did not initiate this case. We did not initiate these advances, but we have always felt that the livestock rates in this general territory were on too low a plane. The Interstate Commerce Commission, after a most thorough investigation, has given us a scale of rates to be applied in southwestern territory, and numerous reductions, and we feel it is no more than fair that the whole territory

be on one plane of rates, and even though it means a few advances into this territory we do not believe it will work a hardship on the farmers, as we do not *not* believe the farmer actually pays and stands the freight rates on horses and mules as they do on cattle, calves, hogs and sheep.

Commissioner Greenleaf: But the shipper who is paying those charges is going to take into consideration when he is buying them from the producer what it is going to cost him to market the animals, and he is going to deduct that from the price he pays, isn't he?

The Witness: Under the plan of buying and selling horses and mules in western trunk-line territory, I don't think that is given much consideration. A gentleman here testified that it cost about $10.00 per head to handle the sale of a horse and mule at Kansas City or St. Joseph, whichever it was, and that included the freight. The average freight rate the Missouri Pacific received for horses and mules in 1924 was below $3.00 per head. I did not state the commission but I happen to know that the commission for handling a standard sale on one horse or mule from the Kansas City Stock Yards is $2.00, or within $1.00 [fol. 686] of as much as we receive for transporting that stock.

Commissioner Greenleaf: Now, that same man testified that the horses they sold during the month of January sold for $45.00 a head.

The Witness: I heard that testimony, but I do not agree with him. I do not say it is a mis-statement of the fact, but I say it is not borne out by the market reports as are the exhibits of the complainants with respect to farm values by counties in the different states.

Commissioner Hussey: Have you ever attended one of these auctions?

The Witness: Yes, sir.

Commissioner Greenleaf: If you will pardon me, I think your information is something like these mules 10 feet and two-thirds high.

The Witness: If I had stopped to think a moment, I would have recognized that, because I was raised on the farm and used to raise mules and I have helped to break mules; it just slipped my mind because I have been on the other side of the fence a long time. As to whether I think that man would still pay the same price for the horse in

the country if it cost $10.00 a head freight instead of $3.00, I do not. He would have to take recognition of that, but when you go to sell a nice well-matched span of mules of a certain age and a certain height, you do not let $1.00 or $2.00 a head, even on a span of those mules, give any thought or any consideration to that. If you want that span of mules you are going to pay for them, and it will be within a fraction of anywhere from $5.00 to $100.00 per span. Certainly I think what it is going to cost to market the [fol. 687] mules makes some difference in the price that the man will pay. The buyer buys those animals with relation to the market price at destination where he is going to sell them at some market, and I should judge that the destination price the buyer has in mind when he buys the mules includes the cost of transportation to market. If he had a reduction of the freight rate into the market that should be reflected in the market price he buys the mules on provided the freight rate is sufficiently reduced; but where there is only $1.00 or $2.00 a head involved I should say it would really not cut any figure in either the sale or in the purchase of the animals.

Commissioner Greenleaf: Mr. Clark, I have set through these hearings and I have heard the men testify, the representatives of the carriers testify, that it did not make any difference what a man got for his grain; that is, that the freight rate was not reflected in what the man received for his grain, the same thing for cattle, and the same thing with horses.

The Witness: It would not seem to be.

Commissioner Greenleaf: Now, it seems to me that it is so unreasonable, because a man that is selling these articles has to take into consideration what he is going to receive for them net; he pays a gross price, which includes all these items, and it seems to me that it is ridiculous to say those things are not considered.

The Witness: Mr. Commissioner, that is true, but when you look upon the Chicago Board of Trade to the oscillation of 1 to 10 cents a bushel an hour at times it would seem as if the freight rate cuts no figure at all.

[fol. 688] Commissioner Greenleaf: But if a buyer who testifies testifies that he pays the marget price, we will say for a bushel of grain, less what it costs him to transport

that grain, and it is the same thing with other products? That is the only question I had. Thank you.

(Exhibits B-137 to B-152, Witness Clark, were duly received in evidence.)

Cross-examination.

By Mr. Pelton:

As to whether the loading and unloading charge included among the absorptions shown on Exhibit B-145 on a car that moved from the Kansas City Stockyards to the St. Louis National Stockyards is required by law under the Transportation Act to be absorbed, I am not positive on that; I do not believe that is true. As to whether all these items with the possible exception of the bridge toll are absorptions due to what might be termed the disability of the carriers, I would not say that it was. As to the stock pens, the carriers maintain at some of these points local stock pens but the shippers do not care to use them; they prefer to use the public stockyards for convenience in marketing and in handling their stock. The Missouri Pacific has stock pens of its own in Kansas City, Kans.; that is in its freight yard and is about three-fourths of a mile from the public stockyards. A shipper is privileged to use the stock pens in Kansas City, Kans.; the Arkansas City, Kans., tariff will apply there without exception. I don't believe you could ship 10 carloads of cattle there, as it is a very small yard.

Commissioner Smith: Well, don't the railroads prefer the livestock shipments to any other class of shipments?

The Witness: I would hardly say that.

[fol. 689] Commissioner Smith: Don't you know they solicit the livestock shipments more than any other class of the freight business in existence?

The Witness: I would not say that.

Commissioner Smith: They have more men out in the country doing it anyway?

The Witness: No; my men are under my jurisdiction to some extent and we have not anyone doing that.

Commissioner Smith: They go out more than any other class of men into the country?

The Witness: Into the country, that may be true.

Commissioner Smith: And every main road that goes into Kansas does that?

The Witness: Yes, sir; that is true.

Commissioner Smith: Then they must like the business.

The Witness: We all like it; we have got to have it.

Commissioner Smith: Well, I know that of my own knowledge.

The Witness: As to how large the Missouri Pacific stock pens are at Kansas City, Kans., I would have to guess; we have a book published giving the number of head those stock pens will hold, but I haven't that book with me; they are very small. I don't think you can get to them from any point in Kansas, except interstate, other than on the Santa Fe. I have never given any thought to what it would cost the Missouri Pacific to establish and maintain facilities at Kansas City to handle an ordinary run of horses and mules. I would not even say that those pens are in actual use every day. I could not say off hand whether they have men there to load and unload and take care of the stock and water them. There is no feed warehouse there but I [fol. 690] think they are equipped with hydrant water. The Kansas City Union Stockyards and other pens maintain all those facilities, and I will admit it is to the advantage of the Union Pacific to use the Union Stockyards at Kansas City.

Mr. Larimore: Do you know how much we pay the Union Stockyards for the privilege of setting them at their unloading chutes?

The Witness: I have stated that; that is what Mr. Pelton is taking exception to. We pay for having the stock unloaded at the stockyards in East St. Louis, Kansas City, and St. Joseph. I could not say whether the Missouri Pacific could perform the service of loading and unloading cheaper than to pay $1.00 for loading and $1.00 for unloading; I would not be willing to admit that. It is a pretty low charge but it is a charge that is placed against livestock and not against other classes of traffic. If we established and maintained our own stockyards and employed our own men to load and unload these cars, none of these absorptions would accrue, but I should judge that the establishment and maintenance of such facilities would be quite expensive.

Cross-examination.

By Mr. Bazan:

We pay a bridge toll on wheat at St. Louis but I do not know what it amounts to. The bridge toll at St. Louis of 5 cents per 100 pounds shown on Exhibit B-145 is paid by the Missouri Pacific out of its revenue. The payment is made to the Terminal Railroad Association, which is an association of about 21 St. Louis lines, including the Missouri Pacific. As to whether my testimony about special services that are performed and furnished on livestock, the hazard that the handling of this commodity is for the carriers, special trains and facilities, was intended to go to the territory under consideration, my actual examples [fol. 691] were given only from Kansas City to St. Louis, in that I was portraying that portion of the case. Other lines are going to testify with respect to the expedited service in Kansas. We operate red ball freight trains all the way from Pueblo to Kansas City, and I believe we are now operating one red ball freight every day between Wichita and Kansas City in each direction, but the actual figures I gave would not go to any part of the territory involved except as to our line between Kansas City and St. Joseph and St. Louis.

In making the contention that the cattle rates were low in this whole territory, by that I mean the territory we know as the Southwest and western trunk line territory. It is self-indicative that I consider the southwestern livestock scale less than it should be from the fact that at the general livestock hearing in Chicago recently the carriers advocated advanced rates over that scale. I think the scale is low in Kansas and Nebraska also. If the 12358 scale on horses and mules is reasonable for the southwestern portion of the United States, I think it is reasonable to be applied in this territory. As to whether I think there should be any relationship, by percentage or otherwise, between the charges per car on horses and mules and the charges on beef cattle, there is no real relationship from any standpoint that I know of except that they use the same class of equipment and are both subjected to the same expedited service. The Interstate Commerce Commission has in numerous cases recognized some sort of a basing relationship from

a rate standpoint, and I have no reason or cause to differ from it. If the relationship is sufficiently high, horses and mules over the cattle rate, I agree that a rate relationship is at least somewhat proper. As to whether the carriers [fol. 692] in this proceeding maintain any rates on horses and mules related by specific percentages or approximately specific percentages to the beef cattle rates in any territories they traverse, they do.

Cross-examination.

By Mr. Tedrow:

As to whether commodity rates on horses bearing a percentage relation to cattle rates, or very nearly aligned with cattle rates, are in existence at the present time all over the western territory of the United States, excluding southwestern territory where this scale applies with the exception of Texas, and excluding the far western territory, I believe that is true as to horse rates in effect from North Dakota, South Dakota, Nebraska, Kansas, Missouri, and Minnesota; I am not so sure of Colorado, and I am not familiar with the Iowa adjustment. Before this scale we did not have commodity rates on horses from Texas to Chicago, St. Louis and Kansas City. For years we have maintained the class A basis in southwestern territory and the Commission has substantiated that basis in two complaints I have handled. I am familiar with Leland's tariff carrying rates on livestock, cattle, hogs and sheep out of the Texas territory to Chicago, St. Louis and Kansas City. That tariff carries commodity rates on horses now but I don't think it did previously; there might have been some rates in there from Fort Worth or just a few points. I do not agree that the class A rates on horses from Kansas City and Kansas points to Texas is the only substantial departure from a class basis all over the United States.

The red ball trains in expedited service I spoke of are not provided especially for horses, we simply carry the horses on the trains with other freight. As to whether we ever have claims on horses on account of delay, failure to reach the market, according to investigation I made through [fol. 693] our Claim Department it is principally on damage to the animal. In saying that the Shreveport scale had been superseded by the scale laid down by the Commission,

I was speaking of interstate rates. The application of the Shreveport scale is more largely intrastate in Texas than it is interstate, both now and before. It applied within Texas, between Texas and Shreveport and between Texas destinations and Natchez, so all that is left is the interstate application through Louisiana. As to my testimony in connection with Exhibits B-142 to B-144 that I consider the horse rates low, the car-mile earnings low, in comparison with the other commodities I show there as having considerably greater car-mile earnings, I think that is self-evident. As to how much reduction can be expected upon these other commodities if increases are made as a result of this decision, I don't think any exception is necessary, due to the fact that we are earning to-day but 3.67 per cent as against a possible 6 per cent under the Transportation Act. I am not prepared to answer whether we would expect a similar relative increase in these other commodities if we are given this increase in the horse rates. As to whether that deficit which those rates are now carrying should be taken out if the horse rates are increased, I would still consider that the rates would afford very low car-mile revenue as compared with other classes of traffic.

The rates on horses in C. F. A. territory shown in Exhibit B-148 are not the sixth class rates, they are the second class rates, and I understand that they were set in that territory by this Commission. If my understanding is correct I will give you within ten days a citation of the decision where that is done. As to whether I consider the second class rate proper for application on horses, it would be [fol. 694] rather high in this territory. As to whether I know of any other part of the country where the second class rate applies on horses, I am not familiar with the territory east of C. F. A. and do not know whether eastern trunk line and Seaboard territories apply the class rates on horses and mules or have a line of commodity rates. I would hardly think that second class would be applicable to horses in western territory. As to whether rates in western territory ranging from 211 to 241 per cent of the cattle rate, as they do in the East, is proper for application on horses, it is owing altogether to what the cattle rates are; as they are to-day, I would say it is a pretty high rate.

Exam. Eshelman: Let the record show that Mr. Clark will furnish within ten days reference to the Commission's decision approving or prescribing rates on horses and mules in C. F. A. territory as shown in Exhibit B-148. (Note: This feature is covered in Mr. Clark's letter of May 21, 1925, a copy of which is transmitted herewith as an original exhibit.)

The Witness: As to whether I spoke with approval of the horse rates applying in southeastern territory, I think that is a very low scale. I am aware of the fact and have testified many times that the Commission has set various rates on horses ranging from 115 to 120 per cent of the cattle rates. As to whether I consider the Commission has erred in prescribing such rates on horses, that is rather an unfair question. It has also prescribed rates as high, as I understand it, as about 200 per cent. It is owing to what the adjustment is on cattle. In Missouri they prescribed 120 per cent, and in the instant case, No. 12358, the range is about 120 per cent of the Director General's scale on cattle in the Southwest. As to whether I have compared the proposed scale on horses in the Southwest with the south-[fol. 695] western cattle scale, I have an exhibit on that which shows that the scale runs right around 115 to 120 per cent of the cattle rates, which I do not think was wrong. As to whether I think we should have the same scale on livestock applying all over this western territory, if the cattle rates are properly adjusted the horse and mule rates might properly be 120 per cent, as prescribed in other cases.

As to whether I think we should have the same rates on cattle between Kansas City and St. Louis or between Kansas City and Chicago as applies, for example, between Fort Worth and New Orleans or between Fort Worth and Memphis, or whether I think we should have the same rates on cattle from Iowa points to Illinois points that we should have in Texas or Oklahoma, I will best answer that by making this statement: The southwestern carriers have always contended that they should have a slightly higher scale of rates on substantially all classes of traffic than is applicable in western trunk line territory. This Commission has recently promulgated certain low scales applicable in western trunk line territory into southwestern territory and reduced our rates. Based on the decisions in those cases, it would seem as if a slightly higher scale applicable in southwest-

ern territory should properly be applied in western trunk line territory. I am in favor of increasing the rates in this territory to the 12358 basis. It is my personal opinion that if the Commission in this case says that we should have substantially this scale in Missouri, Kansas, and Colorado it would be immediately followed by application throughout western trunk line territory. As to whether I am of the opinion that the same level of rates should apply east and north of the Missouri River that applies in [fol. 696] Texas and Oklahoma and Arkansas, I am not familiar with the northern portions of western trunk line territory to the same degree that I am with Missouri and Kansas, the territory here involved. In answering such a general question, I would have to have before me a certain measure of rates and compare them, know what the carmile revenue is, and take different things into consideration. There is before the Commission at this time only two territories, the Southwest and this portion of western trunk line, and I believe that the distance tariff scale of rates in the Southwest can well be accorded to apply in Missouri and Kansas.

The territory of northern Missouri and Iowa, Illinois, Minnesota and Wisconsin has always been considered as being lower rated than southwestern territory. It is our intention to apply this scale of rates via our line between Kansas City and St. Louis running just south of the Missouri River. I could not say whether the scale will be applied from Kansas City to Chicago or from Omaha to St. Louis. I think it will have a direct bearing on the Omaha-St. Louis and the Kansas City-Chicago rates. I think it will no doubt be given serious consideration by the interested carriers. As to whether a rate situation could become effective and continue whereby the rates on horses and mules from Kansas City to St. Louis were on a higher level via the Missouri Pacific than via other lines north of the Missouri Pacific, I have already conferred with the traffic officials of the Wabash Railroad, and the Wabash Railroad intended to be present at this hearing and intervene in favor of the other carriers; they want the scale established between Kansas City and St. Louis. The only other road not represented here is the Chicago & Alton and I do not know [fol. 697] what its position would be. As to whether we could maintain rates from Kansas City to St. Louis on the

scale without taking in the rates from St. Joseph, the rates from Kansas City, St. Joseph, Atchison and Leavenworth have generally been maintained on one basis to St. Louis. If the scale of rates to the Mjssissippi River as a basing point was advanced, it would possibly follow that the Chicago adjustment would be given some readjustment. That is rather far-fetched at this time.

If all the rates to Chicago were involved, it would necessarily involve the western trunk line territory, but that need not necessarily follow because southern Missouri is substantially intermediate; that is, the railroads south of the Missouri River are substantially intermediate between the markets and there would only be the features of Kansas City and St. Joseph to St. Louis involved in that case. The Commission in various cases has seemingly considered the livestock situation in these various western trunk line states, Missouri, Iowa, Illinois, Nebraska, and South Dakota, and has set scales on livestock in western trunk line territory lower than apply in the Southwest. The horse rates in this case are about 120 per cent of the Southwestern livestock scale. This is a southwestern and western trunk line case, as you can not reach Kansas City and St. Louis without going through a portion of western trunk line territory. As to whether I still think it is logical to apply this horse scale all over western trunk line territory, we are going around in a circle. I believe the scale is very fair to be applied in the territory here involved, and that is all that is before the Commission. When you take into consideration all the territory north of here and Chicago it is a surmise.

As to whether I consider it a proper scale to apply as through rates going beyond St. Louis into central freight [fol. 698] association territory, we have always objected to an overhead scale of any kind published through to C. F. A. and eastern trunk line territory for the reason that the Mississippi River has been recognized for years as a proper basing point or as a proper rate breaking point. There are different lines serving that territory ending at the Mississippi River. As you have asked for my personal opinion, I will state that we are not in favor of establishing through rates from this territory into C. F. A. and eastern trunk line territories based on a mileage scale. As to whether this mileage scale would have the effect of reducing the through rates from western trunk line terri-

tory to eastern territory, any mileage scale, as the distance progresses, will generally make a lower basis than a combination.

Examination.

By Examiner Eshelman:

As to the boundary of western trunk line territory as compared with southwestern territory, it is the State line of Kansas and Oklahoma on the south. We have generally considered the line of the Missouri Pacific from Pleasant Hill down to Carthage as being in western trunk line territory, due to its close proximity to the eastern boundary of the State of Kansas. From Carthage, strictly speaking from the 9702 territorial standpoint, it extends east to Crane, Mo. The 9702 territory included southeastern Missouri, and was bounded as between the north and the south by the line of the St. Louis-San Francisco Railroad, which extends from Cape Girardeau and Mingo through Williamsville and on across to but not including Springfield, Mo. Springfield has now been included in the tariffs in southwestern territory. It is a fact that what I have described as "B" territory is not the same as the boundary between southwestern territory and western trunk line territory. [fol. 699] When I spoke of a standard stock car containing 24 horses I had reference to a 36 foot car. I did not refer in my testimony to a 30 foot car being a standard car so far as rates are concerned.

J. P. McDonald was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination.

By Mr. Andrews:

I am Statistician of the Atchison, Topeka and Santa Fe Railway Company, with headquarters at Topeka, Kansas. Exhibit B-153 was prepared under my supervision and is correct to the best of my knowledge and belief, reflects the traffic density of the Atchison, Topeka & Santa Fe Railway System in the States of Kansas, Oklahoma and Texas, ex-

pressed in terms of revenue net ton-miles. It is exclusively revenue business and does not include any non-revenue or company material which may be hauled.

(Exhibit 153, Witness McDonald, was duly received in evidence.)

Cross-examination.

By Mr. Bazan:

As to whether the last column should be average revenue ton-miles per mile of road, the net ton-miles generally referred to include both the revenue and non-revenue, but in defining it in this manner as revenue ton-miles it represents only the weight of the load in the car and might be accepted as net, probably; in the thought you had in mind, as representing a load only. The figures in the last column would be a subdivision of the mileage into the revenue net ton-miles.

Redirect examination.

By Mr. Andrews:

As to whether I have similar figures for 1924 to those in Exhibit B-153, I have the figures for 1924 in the rough. The [fol. 700] revenue ton-miles per mile of road for Kansas is 976,224, for Oklahoma 967,470, and for Texas 1,082,456.

Recross-examination.

By Mr. Tedrow:

I have not analyzed the traffic in Texas particularly to bring out the cause of the increase in revenue net ton-miles per mile of road.

Recross-examination.

By Mr. Bazan:

As to whether that also applies to the Oklahoma increase, there was a substantial increase around this section of the country, Kansas and Oklahoma and the northern part of Texas, due to grain movement.

B. M. GILLESPIE was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination.

By Mr. Andrews:

I adopt the testimony of the previous witnesses as my own and concur in the testimony as given, and in addition wish to state that the Kansas lines are of the opinion that the present rates on horses and mules from Kansas to the Missouri River are on a too low basis and that the proposed scale in Docket No. 12358 should be made applicable. First taking up the question of the present rates on horses and mules, carloads, from Kansas points to the lower Missouri River crossings, these rates were originally published to take care of the movement of low valued animals, but as the value of horses increased the rates were not increased accordingly. On May 29, 1909, the Kansas statutory maximum freight rates became effective, and in compliance with the law the Kansas lines readjusted all the rates on horses and mules from Kansas points to the Missouri River, namely, Kansas City, St. Joseph, Atchison and [fol. 701] Leavenworth, so that they would in no case exceed the mileage scale of rates fixed by the Kansas Legislature, and these rates have remained in effect the same, subject to increases authorized under General Order 28 and Ex Parte 74 and the reductions of July 1, 1922.

Exhibit B-154 is a map of the Santa Fe System on which we have shown by black squares the horse and mule markets in the territory involved in this proceeding, namely, Wichita, Kansas, and Kansas City, St. Joseph, and St. Louis, Missouri, and I have also circled in blue pencil representative points in Kansas and eastern Colorado which are shown in exhibits to be introduced later. This exhibit is simply to simplify locating the points referred to in the other exhibits.

Exhibit B-155 is to show the present rates on horses and mules per standard car of 36 feet 7 inches, also earnings per car-mile from representative points in Kansas and eastern Colorado to Kansas City as compared with car revenue and earnings per car-mile on other moving commodities. The distances we have shown in this exhibit

represent the mileages which the carriers used in arriving at the rates to be published in compliance with the order in No. 12358, which provided that the distances to be used in figuring rates to the markets should be the shortest route by existing connections for interchange of carload traffic, but such routes should not embrace more than the parts of lines of three carriers. As to the other commodities shown on the exhibit we have used the average carloading for the Santa Fe System. The horse and mule charge I have figured by using minimum weight for a 36 foot car. Especial attention is called to the low carload revenue and earnings per car-mile on horses and mules as compared with other moving commodities. In practically [fol. 702] all instances the carriers receive less in revenue on horses and mules than on any of the other commodities shown, notwithstanding the greater cost of transportation incurred in handling the latter. This will bear out the contention that the rates on horses and mules to the Missouri River are on too low a basis and do not bear their just proportion of the transportation cost.

Exhibit B-156 is to show the distances and present rates on horses and mules per standard car of 36 feet 7 inches, also earnings per car-mile from representative points in Kansas and eastern Colorado to St. Louis as compared with revenue and earnings per car-mile on other moving commodities. What was stated in connection with Exhibit B-155 pertaining to Kansas City likewise applies to this exhibit, which is self-explanatory and bears out our previous statement that the rates and charges on horses and mules do not bear their just proportion of the transportation costs.

Exhibit B-157 is to show the distances and proposed rates on horses and mules per standard car of 36 feet 7 inches, also earnings per car-mile from representative points in Kansas and eastern Colorado to Kansas City as compared with car revenue and earnings per car-mile on other moving commodities. Attention is called to the fact that the earnings under the proposed scale have improved, but the earnings per car-mile are still low as compared with the other moving commodities.

Exhibit B-158 is similar to Exhibit B-157 with the exception that I have used St. Louis as the destination point.

What I have said in connection with B-157 applies to this exhibit, and same is self-explanatory.

[fol. 703] Exhibit B-159 shows the distances and present and proposed rates on horses and mules per standard car of 36 feet 7 inches, also earnings per car-mile from representative points in Kansas and eastern Colorado to Wichita applicable on interstate traffic; that is, the proposed rates are interstate. The present rates from Kansas stations to Wichita applicable to-day on state and interstate traffic, and were authorized by this Commission in the so-called Kansas Advanced Rate Case, Docket No. 11916, 64 I. C. C. 679, which rates were published as the result of agreement between the Kansas Commission, the interested shippers and the carriers.

The rates which were published to Wichita from Kansas were compiled from the rates then in effect from Kansas points on the main line of the Santa Fe to Kansas City and the rates to Wichita were made on the scale so arrived at. If the Commission finds that the proposed rates in this docket should be published from Kansas City the same basis should apply on traffic to Wichita. As explained, the rates to Wichita are made on the same mile for mile basis as the rates to Kansas City. The present rates from the first station in eastern Colorado are graded to the rates from the last station in Kansas, named Coolidge, and if the Commission should find that the rates under this proposed scale to Kansas City are applicable, and it does not apply on Kansas intrastate traffic, it will break up the relation which has been maintained as to Kansas versus the eastern Colorado stations.

In his Exhibits B-110 and B-111 Mr. Corp reproduced the application of the interstate carriers and also order of the Kansas Commission covering rates on livestock to Salina. In explanation of this application I would state that on re-

[fol. 704] quest of the Salina Chamber of Commerce, which claimed it was in direct competition with Wichita, and should have the same basis of rates in effect to that point, and this is the basis the carriers had in mind in filing the application shown in Exhibit B-110, so what is done in connection with the rates to Wichita should also apply in connection with the application referred to.

Taking up the Kansas intrastate situation, at the time the carriers made a check of the rates to Kansas City, St.

Joseph, St. Louis and Wichita in compliance with the order in this case we found that if the same scale were not applied to points in Kansas it would create discrimination; that is, the present rates published on horses and mules from Kansas points to Kansas City, St. Joseph, Leavenworth and Atchison are the Kansas statutory rates, and as all of these points mentioned are in direct competition with each other, the scale in Docket No. 12358, unless the Kansas Commission approves the same for application, would be higher than the rates to Kansas City, Kans., Leavenworth and Atchison, thereby creating discrimination. To remove such and to place the rates in Kansas on the same basis as in effect we filed this application to apply the same scale on intrastate traffic.

Exhibit B-116 is to show the rates in effect on horses and mules for 36 foot 7 inch cars prior to April 20, 1925, from representative Kansas and Oklahoma border points as compared with the rates published from the Oklahoma border points to Kansas City and St. Louis now in effect, which were published in compliance with the order in this case, although the proposed rates which would result under the application of the scale in this docket from the Kansas points. It will be noted that the rates from Oklahoma prior [fol. 705] to April 20th were in relation to rates from the Kansas border points to the two destinations named. This adjustment as it now stands creates a situation which did not exist before, and it is our belief that this scale should apply so as to maintain the relationship which has existed for a good many years. Also, in the Consolidated Brick case, I. C. C. Docket No. 14217, a tentative report has now been issued in which one scale was prescribed for application within southwestern territory, which scale applied from both Kansas and Oklahoma.

Exhibit B-161 is to show the present mileage rates on horses and mules for a 36 foot car between Kansas points, single and joint line, as compared with the scale carried in Docket No. 12358.

Exhibit B-162 is a statement of the loading of revenue freight on the Santa Fe for the calendar years 1922 and 1923 for use in connection with an exhibit I introduced showing revenue per car and earnings per car-mile on the average loading of various commodities. This exhibit is self-explanatory, and I only call attention to the fact that

the average per carloading of horses and mules is the lowest, with the exception of livestock, of any of the commodities shown other than automobiles and boat and vessel supplies, on which the rates per 100 pounds is much higher than the rates on horses and mules. This exhibit shows that the average loading of horses and mules is less than half the average loading of all carload traffic.

In the last few years one of the economies practiced by the carriers was to increase the weight loading per car, and it has been the custom to buy larger equipment of all [fol. 706] kinds, including livestock cars. Unfortunately, the increase in freight loading of horses and mules has not kept pace with the increased loading of other commodities, which is shown in Exhibit B-163, a statement of the average tons per car for the calendar years 1917 to 1923 on revenue freight handled by the Santa Fe System. In the right-hand column of this exhibit are shown the percentages which the loading in 1923 represents of the loading in 1917. It will be seen that there has been a substantial increase in the loadings except on livestock and fresh meats. The last entry on this exhibit shows that, taking all carload freight, there was an increased loading of 6.5 per cent.

It is a well known fact that the claim payments for loss and damage in the handling of livestock are quite large and in proportion to freight earnings run higher than on carload freight generally. This is illustrated by Exhibit B-154, which is a comparative statement of loss and damage claim payments on livestock and all freight made by the Atchison, Topeka & Santa Fe System for the years 1917 to 1923, inclusive. It will be noted that for the year 1923 we handled 129,819 cars of livestock on which the loss and damage claims paid represented $168,713.18, or an average of $1.29 per car or 11.73 cents per ton on all livestock handled. The average loss and damage claim payments on all carload freight except livestock amounted to $1.10 per car of 3.59 cents per ton.

I also point out that the ratio of cars of livestock to total number of cars handled in 1923 was 9.68 per cent; ratio of livestock claim payments to total claims, 11.29 per cent; ratio of tons of livestock to total tons handled, 3.76 per [fol. 707] cent. The average claim per car on livestock for the years 1917 to 1923 was $1.75; also, the average

ratio of cars of livestock to total cars handled during the period was 11.03 per cent, while the average ratio of livestock claims paid to total claims during the period was 11.27 per cent. I believe this makes it clear that the claim payments per car on livestock exceeds those of all other kinds of carload freight. We were not at this time able to secure da as to the claim payments on horses, as our records do not separate horse and mule claims from other kinds of livestock.

Exhibit B-165 shows the percentage ratio of loaded haul for the years 1914, 1915 and 1916, and reflects the extra service required in the handling of livestock in livestock equipment compared to other freight in box, furniture, and refrigerator cars for the same period. It will be noted that the empty to loaded haul for the year 1916 on box cars was 13 per cent, on furniture cars 22 per cent, and on refrigerator cars 31 per cent, while on stock cars it was 66 per cent. We believe this is very important, as it plainly shows there is an excessive haul of this class of equipment to take care of shipments of livestock which are offered to the carriers. Mr. Clark's testimony as to expedited service and handling is generally true of the situation in Kansas.

(Exhibits B-154 to B-165, Witness Gillespie, were duly received in evidence.)

Cross-examination.

By Mr. Pelton:

As to how long the rates into Wichita, Hutchinson and other points shown in Exhibit B-159 have been in effect, the Commission's decision referred to by me, Docket No. 11916, was decided December 13, 1921, and the carriers [fol. 708] published those rates as soon as possible thereafter, but I can not give the exact date. I mean to say that the Commission prescribed these rates on horses from Hutchinson to Wichita. I explained in my testimony that the rates in effect to Wichita are mile for mile on the scale that applies from the points on the main line of the Santa Fe to Kansas City made into a scale and applied for the actual distance into Wichita; in other words, they are the Kansas statutory rates applying to Kansas City. I said the rates from points in Colorado up to Coolidge are created in relation to the Kansas intrastate scale but I did not say

they met it. Both the single-line and joint-line rates in Exhibit B-161 are legislative-made rates, and the interstate rates from eastern Colorado in Exhibit B-159 are rates put in voluntarily by the carriers. The single-line rates became effective May 29, 1909, and the joint-line rates were made effective some years later, but I have not the exact date with me.

By Mr. Pelton: Q. That was long before the Interstate Commerce Commission was given power of suspension in 1909, wasn't it?

Mr. Andrews: 1910, I think was the date.

The Witness: As to whether it appears that since 1909 the carriers have voluntarily maintained cheaper interstate rates than the Kansas intrastate rates, an intrastate rate of $75.90 applying for 278 miles from Coolidge to Wichita per Exhibit B-159, which would figure $79.75 by at Exhibit B-161, there are some cases, but if you will look at Exhibit B-160, the distance of 278 miles from Coolidge is figured via Santa Fe, Stafford, Missouri Pacific, Kingman and Santa Fe; in other words, the distances shown there are arrived at under the formula prescribed in No. 12358 and have not been used in connection with the single-[fol. 709] line scale shown in Exhibit B-161. It is true that I have shown a single-line rate of $73.25 for 230 miles from Garden City as against a voluntary rate of $67.10 on the interstate scale. The present rates to Wichita from Garden City are lower than the scale, but as I stated the scale we used in publishing rates to Wichita was made by taking the rates in effect to Kansas City, using the main line of the Santa Fe, and making the scale from that mile for mile. As to whether there are similar rates on the Missouri Pacific, say from Geneseo, I have never made a study of those Missouri Pacific rates and I am not familiar with them.

Cross-examination.

By Mr. Bazan:

In speaking of the low value rates which were established from Kansas points to the Missouri River, that was originally the basis I gathered from our records which run back as far as about 1896; that was what they considered a

very low basis of horses and mules to take care of what they called the low-grade animals. It is my contention that the animals are now higher-valued than at that time; I do not think that should influence rates altogether but partially. I can not answer as to whether the intrastate rates within Kansas and interstate from Kansas to the Missouri River were on the same levels when the statutory rates were made in Kansas.

Exhibit B-155 is a comparison of the charges on horses and mules for a 36-ft. car with the charges on numerous other commodities, using average loading, but I would state that the other average loads shown are also on 36-ft. cars; I said it was the average loading and introduced another exhibit to show the average loading for the system. The average loading on wheat, corn, cement, brick, packing-house products, etc., represent the loading in all classes [fol. 710] of equipment, which is also true of Exhibits B-156, B-157 and B-158. I think that comparison is proper in comparing the revenue per car received on other commodities moving between the same points. I think it is proper to include among the other commodities 50-ft. cars and compare them with the loading of horses and mules; I have compared some there that were possibly as low as the minimum weight for 36-ft. cars.

With reference to my statement that if the interstate rates from Kansas to Kansas City were made on the 12358 scale and the Kansas rates were not changed there would be discrimination against Kansas City in favor of Atchison, Leavenworth, and Kansas City, Kansas, as to whether there are any horse and mule dealers located at the three latter points, I can not say, but the situation would still exist there. Regarding the loss and damage claim payments shown on Exhibit B-164 under the heading of live-stock, I explained when this exhibit was introduced that we were not able to secure data as to claim payments on horses. As I show in the exhibit, it covers the Atchison, Topeka and Santa Fe system, which would cover the loss and damage claim payments on the entire system, including shipments from the extreme Southwest and the West Coast to destinations as far as Chicago. As to whether the ratio of the empty to the loaded haul on stock equipment has decreased since 1916, as shown in Exhibit B-165, I have not any figures to substantiate anything I would say, but it is

my understanding that that is so. I can not say whether the ratio of empty refrigerator cars to loaded refrigerators has increased.

Redirect examination.

By Mr. Andrews:

With regard to the exhibits in which I have compared the car-mile earnings on horses and mules with the car-mile earnings on other traffic, I did not use the minimum [fol. 711] weight on horses and mules but used rather the minimum weight of 23,000 pounds for 36-ft. cars prescribed in No. 12358. The rates in that case were prescribed in cents per 100 pounds and the Commission prescribed the minimum weight that should be used. That minimum is not below the actual loading, which on the Santa Fe was 11.73 tons or 23,460 pounds, but that would not perceptibly change the car-mile earnings.

M. A. Rawlings was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination.

By Mr. LaCoste:

I am rate clerk in the offices of the Rock Island Railroad at Kansas City. To save time and avoid repetition as much as possible, I adopt the testimony previously given by Mr. Clark and Mr. Gillespie.

Exhibit B-166 is based exactly the same as that of the preceding witness, Mr. Gillespie, comparing 12 commodities in per-car and per car mile earnings against those of horses, using on the horses the rates prescribed in No. 12358. In figuring the earnings on these different commodities I have used the average loading per car on the Rock Island system. There are two earnings shown on a large percentage of these figures. The first one, represented by a star, covers earnings in cents per car mile on the basis prescribed in No. 12358, using the short-line distance of not to exceed three lines of road. The second is shown by the letter X and represents earnings in cents per car mile based on the

Rock Island mileage in all cases. The line opposite the name of cities is the total earnings on the car. The line opposite the asterisk is on the short-line distance and opposite the letter X I have used the Rock Island mileage. [fol. 712] The total movement of horses and mules over the Rock Island system for the year 1924 was 2,628 cars, which constituted .1 per cent of the system's tonnage, the total revenue obtained on these cars being $177,698.00. Claims paid against these shipments amount to $13,100.00, or 7.4 per cent of the revenue obtained, which figures an average of $5.00 per car. There is one extra cost added to the handling of livestock that has not been brought out as yet and that is the stopping-in-transit in compliance with the 36-hour law and State and Federal quarantine regulations. Our operating department figures that each time a car is stopped for unloading, an additional cost of approximately $6.00 accrues.

Commissioner Hussey: In the territory involved in this action, that would not apply, would it?

The Witness: Yes sir. Going into Kansas City from Colorado they can not make it in 36 hours.

(Exhibit B-166, Witness Rawlings, was duly received in evidence.)

Cross-examination.

By Mr. Bazan:

In the case of the Dodge City comparison on page 2 of Exhibit B-166 I show an asterisk against the mileage of 339 and the X against the 352 miles, and then show $108.10 per car. The asterisk rate is figured by using the Santa Fe direct. The rate from Salina of $78.20 per car is figured on the 186 miles by the Union Pacific. The whole exhibit is figured on the short-line mileage. I have given consideration to the short-line mileages via more than one line, but it would be a hard job to point out one of those cases.

[fol. 713] C. FRANKENBERGER was thereupon called as a witness and, having been duly sworn, testified in substance as follows:

Direct examination (pro se):

I am connected with the Traffic Department of the Union Pacific Railroad Company at Omaha, Nebr., engaged in the handling of formal and informal complaints and reparation claims. The Union Pacific was assigned to handle the Colorado end of the case. I adopt the testimony of the other railroad witnesses so far as it applies to our company.

Exhibit B-167 is a comparison of the present rates on horses and mules, carloads, from points on the Union Pacific to Kansas City with rates prescribed on horses and mules from points in Nebraska to Omaha and with rates prescribed in 93 I. C. C. 479, commonly referred to here as the 12358 scale. The first block of rates are present rates, the second block are those prescribed from points in Nebraska to Omaha, Kansas City and other Missouri River points, but specifically named for application on cattle and on sheep (double deck), the scale rate for horses and mules being fixed at 115 percent of the cattle rate. In comparing the horse and mule rates under the Nebraska scale with the present rates from Colorado, it will be noted that it would advance the rate to $142.50 from Denver, which is the only important horse and mule shipping point in Colorado on our line, or an increase of $24.00 per 36-ft. car; however, rates from Colorado should be on a somewhat higher level than from Nebraska. This is substantiated by the fact that in the so-called fares-rates case, 52 I. C. C. 439, the Commission prescribed rates from Colorado to the western half of Nebraska and Kansas at 115 percent of the rates fixed by the Commission from Missouri River to [fol. 714] Nebraska points, 40 I. C. C. 201.

The third block of rates shown at the right side of the sheet are those prescribed by the Commission in No. 12358 in territory south of Kansas, commonly designated as southern territory. It will be seen there is a difference of only $4.50 in the per-car charge from Denver to Kansas City under this scale in comparison with the scale prescribed for application from Nebraska points to Missouri River points, including Kansas City. The Nebraska scale runs out at 600 miles, but I extended it at the same rate of progression used by the Commission, namely, 2 cents per 25-mile blocks. The present rate yields 18.6 cents per car mile from Denver to Kansas City, while the Nebraska scale

yields 22.6 per car mile for 636 miles and the scale asked for is 23.1 cents per car mile, or only .5 of a cent in excess of what the carriers would earn transporting horses and mules under the Nebraska scale. The increase in rates to basis sought would mean only about $1.00 per head over the present scale.

There was heard at Denver on the 12th, 13th and 14th of this month two complaints, I. C. C. Docket Nos. 16613 and 16614, attacking the rates on potatoes and other vegetables from northern Colorado points to points on the Missouri River and St. Louis and points in the Southwest generally. In those cases comparisons were made by the potato shipping people with rates on horses and mules for the purpose of showing that the per-car earnings on a car of vegetables exceeded the earnings on horses and mules. Complainants took the position that if carriers could afford to transport as high grade traffic as horses and mules under the present rates, which are lower than on vegetables, they should certainly reduce the vegetable rates. To illustrate, the rate [fol. 715] on vegetables to Kansas City is 50 cents, on cabbage, minimum 24,000 pounds, resulting in a per-car charge of $120.00; the minimum on potatoes is 30,000 pounds, yielding $150.00 per car. The per-car charge on horses and mules at Kansas City is $118.50, or $1.50 less than on a car of cabbage and $31.50 less than on a car of potatoes.

Sheet 2 is a comparison of rates and per-car charges on horses and mules under the scale of rates fixed by the Commission in No. 12358 with rates and per-car charges under the Colorado distance scale and under the Colorado-Kansas interstate scale. It will be noted that the per-car charges on the Colorado state scale are greater for distances up to 260 miles; for distances beyond that the 12358 scale rates are some higher. Charges on the Colorado-Kansas interstate scale are also higher than the 12358 scale therefor to 260 miles. Beyond that distance they are the same as the Colorado state scale rates. The purpose of the comparison is to show the rates originally prescribed by the Commission for application from Colorado are not excessive compared with other rates in effect on horses and mules in the same general territory.

Sheet 3 is a comparison of rates and per-car charges on horses and mules from points on the Union Pacific in Colorado to Kansas City with rates and per-car charges on wheat and corn. There is a very substantial movement of

wheat and corn between points in Colorado and the Missouri River as well as to points beyond the Missouri River. The statement indicates the great disparity in the per-car charges as between horses and mules and wheat and corn. I believe the statement is self-explanatory and no further comment is necessary.

[fol. 716] Page 4 is a comparison of rates and per-car charges on horses and mules from Colorado points to St. Louis with rates and per-car charges on wheat and corn, and is similar to the preceding statement except as to the destination point. Here is also shown a great disparity of the per-car earnings on horses and mules under what we earn on wheat and corn. I have also shown the per-car earnings under the 12358 scale in comparison with the wheat and corn earnings.

Page 5 is a comparison of rates and per-car charges on horses and mules from Denver to the Missouri River and St. Louis with rates and per-car charges on various other commodities. The heading showing Denver to Missouri River really should read between Denver and the Missouri River. There is a substantial movement of most of the commodities shown in this comparison which I developed by personal examination of report sheets kept by our Denver office showing the number of carloads of the various commodities received and forwarded from that station. In some cases the movement is eastbound and in others it is westbound. The horse and mule movement is eastbound, but I am comparing the horse and mule earnings with earnings on other commodities moving between the same points.

In only a single instance is there a per-car charge on any commodity shown as low as on horses and mules, namely, oats to Kansas City, but on oats to St. Louis the per-car earnings are considerably in excess of the earnings on horses and mules. With the exception of grain and petroleum oil I have used tariff minimum weights, had I obtained and used actual loadings the difference in earnings would have been so marked. The minimum weights on [fol. 717] several of the commodities ranged from 20,000 to 36,000 pounds and even on the 20,000-pound commodities the earnings are substantially in excess of those on horses and mules.

I was somewhat curious to know how the movement of horses and mules compared with the movement of other

livestock especially cattle into the Kansas City Market and I prepared the statement on sheet 6 from the Kansas City Stock Yards 54th Annual Report. It will be noted that horses and mules comprised only .5 percent of the total movement of livestock. Comparing cattle with horses and mules over the Union Pacific alone, it shows a horse and mules movement of 3.5 percent of the total movement of cattle. I checked up the movement of horses and mules from all Union Pacific points in Colorado on the line running east from Denver to Kansas City at the Kansas state line, there were 35 stations, and found a movement of only 23 carloads of horses and mules against 893 carloads of cattle. The horses and mules comprised only 2.5 percent of the total carloads of horses and mules and cattle.

(Exhibit B-167, Witness Frankenberger, was duly received in evidence.)

Cross-examination.

By Mr. Bazan:

As to whether the 115 per cent I spoke of being prescribed between Colorado and Kansas applied only between eastern Colorado and western Kansas, that took in the Colorado common-point territory and east thereof, and I believe it ran to about the central part of Nebraska and Kansas. The rate from Denver is used both as a component or in combination with other rates on movements from beyond Denver. As to whether an increase in the Denver rate would have its influence in higher rates wherever it is used in traffic from beyond, I presume it would to some [fol. 718] extent; but I presume there is a large amount of livestock, I know particularly there is with regard to cattle and sheep that moves into Kansas on transit rates and moves out on the balance of the through rate to the markets. I could not say offhand what is the extent of the territory west and northwest of Denver where the rates are constructed on eastbound movements, using as a factor beyond Denver the published Denver to destination point rate, having in mind particularly the Missouri River and Mississippi River markets but I think it would probably be in the territory in Colorado west of the Colorado common points. From practically all the territory southwest and northwest of Denver I think it would move on through

rates with transit privileges. There are some transit privileges on horses and mules.

Defendants rest.

J. H. TEDROW, being recalled as a witness, testified further in substance as follows:

Direct examination (pro se):

In the western territory, I mean the territory west of Chicago and St. Louis, and going clear to the Rocky Mountains, the railroads have always maintained commodity rates on horses; now, that is from Minnesota, the Dakotas, Montana, Wyoming, Colorado, Kansas, Nebraska. From Arizona and New Mexico northbound to the various markets, those rates all apply between, northbound from Texas and also from Oklahoma. There are commodity rates to all markets, but out of this territory southbound to Texas points there were no commodity rates. They were all class A and that was a departure from the general line-up of the rates on horses. It was something that did not occur any place else in this territory. That was what our com- [fol. 719] plaint in No. 13001 and Mr. Pelton's complaint attempted to correct. Those rates on horses which the carriers voluntarily maintained and voluntarily established and maintained bore certain relationships to the cattle rates; sometimes they would be 105 percent, and sometimes they would be 130 percent or something or other around in line with the cattle rates. There was no defined relationship, and I just want to make that statement because I have not with me any exhibits to show it although I showed it in 13001, our horse case, which I learned after coming here was not consolidated with this case.

Cross-examination.

By Mr. Andrews:

As to whether I mean that during all the time covered by my testimony nothing but commodity rates were applicable on horses and mules in the territory I have just described, I mean that the general line-up of rates on horses in this western territory was commodity rates, to all the markets, from all the markets; that is, they applied between, with

the single exception of the southbound rates to Texas; from Texas we had commodity rates northbound. I would not say how long a period my testimony covers, but I know that was the case that existed for years, and I particularly figured out the situation in connection with our No. 13001 case. I made this examination at the time No. 13001 was tried in 1921, and there has not been any change in the general line-up of the horse rates since then except for the case we are talking about now. I did not find class rates applicable to or from any markets; I did not examine all the tariffs but I examined enough to find out what the situation was.

[fol. 720] Cross-examination.

By Mr. Bazan:

It is true that it was the combination of intermediates, using the commodity rates to the Oklahoma-Texas and the Louisiana-Texas border points in connection with the distance class rates beyond those points which started all these horse and mule cases and caused the break-down of the through class rates I have noted in the establishment of the 12358 scale. That was what was brought out in No. 13001 and is dealt with in the decision in that case. Prior to 1916 the rates applying southbound on horses to Texas were Class C. That was carried as a classification exception and the railroads amended that classification exception and made them Class A; that got by and nobody found it. When the 25-percent advances came on, the 6-cent maximum increase that applied in connection with commodity rates on livestock did not apply in connection with that Class A rate, so, whereas previously our Class C rates had been closely in line with the northbound rate on horses and we had no kick to Texas, the class A rate with the 25-percent advance on it threw everything out of line and that is when we began to find out we could make combinations on the Oklahoma border points and break down the through rates or make combinations on Shreveport and break down the through rates.

It thus might be said that 12358 is really the creation of a basis which has never existed before; that it is not really a correction of previous horse and mule scales but is the creation of a new one. If we had had commodity rates on

horses to Texas based on the same as the old scale C basis, either the class C basis as published or as a commodity rate, and the maximum advances had applied on that under General Order 28, we would not be in here to-day fighting this case because we would have commodity rates lined up with the northbound rates.

[fol. 721] Exam. Eshelman: This is really not elucidating testimony from you, but since you are making the point that you would have been satisfied if your higher rates would have been knocked out, I am simply drawing your attention to the fact that the Commission had something before it other than the Kansas City situation; we had before us complaints alleging undue prejudice to Fort Worth and preference for these Missouri River markets.

The Witness: Well, I understand that, Mr. Examiner, and we also had a complaint of the Fort Worth and the Texas rates, and so far as our southbound situation is concerned this scale has fixed us up very nicely.

Exam. Eshelman: Yes, I know; but as to drawing your shipments inbound you were not on the side lines cheering for Fort Worth and asking that they have the same inbound rates as you do.

The Witness: Well, we have no particular objection to an adjustment being made to Fort Worth. We have no quarrel with the rates being adjusted reasonably to Fort Worth. All we are fussing about here is when you get right down to it, we do not want our rates up here increased because of that southern complaint, you see.

Mr. Andrews: I thought you said that before.

Exam. Eshelman: It is your judgment that your southern competitors should have an equal basis with you, both inbound and outbound?

The Witness: I will say that I do not think there is any reason for the Fort Worth people having exactly the same rate, mile for mile, as we do out of Kansas. You are going down through a higher-rated, lower-density territory, as I see it, when you get to Fort Worth.

[fol. 722] Exam. Eshelman: There is no need of my getting off the track. Strictly speaking, that is not here.

By Mr. Bazan: Q. In your judgment, under normal conditions, do you think that Fort Worth would be able to get up into Kansas and draw the animals from country points?

The Witness: To Fort Worth, as to which the Fort Worth people complain, was an exorbitantly high and abnormal basis, Class A, different from any other basis in this territory. Now, they have an adjustment which reduces their rates considerably, and in my judgment Fort Worth can go into Kansas and draw horses against Kansas City and can go into their trade territory, because we have to take those horses to Kansas City, pay a rate, and then pay another rate out.

(Whereupon, at 6:20 o'clock P. M., May 16, 1925, the hearing in the above-entitled matter was closed.)

[fol. 723] EXHIBIT II

Before the Interstate Commerce Commission

Docket No. 12146

NATIONAL LIVESTOCK SHIPPERS LEAGUE et al., Complainants,

vs.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY et al., Defendants.

Docket No. 12268

BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF SOUTH DAKOTA et al., Complainants,

vs.

THE CHICAGO AND NORTH WESTERN RAILWAY COMPANY et al. Defendants.

Denver, Colorado, June 1, 1921.
Chicago, Illinois, June 6, 1921.

Before William A. Disque, Attorney-Examiner.
Met pursuant to notice.

APPEARANCES

(Omitted, being as recited in 63 I. C. C. 107 and 77 I. C. C. 451.)

PROCEEDINGS

Exam. Disque: Hearing will be had at this time and place in Docket No. 12146, National Livestock Shippers League and others against the Santa Fe and others. This case involves the livestock rates in the so-called western group, as defined in Ex Parte 74.

I understand that with this case there can be heard Docket No. 12268, Board of Railroad Commissioners of the State of South Dakota against the C. & N. W. and others, involving rates to and from South Dakota. In No. 12268, by complaint filed February 15, 1921, it is alleged that the rates, charges, rules, regulations, classifications, minimum [fol. 724] weights and practices of defendants in connection with the transportation of livestock from stations in South Dakota to markets and points in various states result in charges very much in excess of those based on rates in effect from stations in North Dakota, Nebraska, Iowa, and Minnesota to the same destinations and that said charges are unjust, unreasonable, excessive, unduly and unjustly prejudicial and discriminatory to shippers and receivers of livestock in South Dakota and in said destination territory and to South Dakota as a locality, and are unduly and unjustly preferential to shippers and receivers of livestock in the said states of North Dakota, Nebraska, Iowa, and Minnesota to said states as a locality and said destination territory; and that the rates in effect for the transportation of livestock, cattle and sheep known as stockers and feeders, shipped from ranges in the States of Montana, North Dakota, Wyoming, Colorado, Nebraska, Kansas, Oklahoma and Texas and from the aforesaid market and destination points to points in South Dakota are unduly and unjustly prejudicial and disadvantageous to the people of South Dakota engaged in pasturing, feeding, and fattening of livestock, cattle and sheep, and are unduly preferential to their competitors in the states of Nebraska, Iowa and Minnesota, in violation of sections 1 and 3 of the Interstate Commerce Act. The Commission is asked to prescribe for the future just and reasonable rates, rules, regulations, classifications, minimum weights and practices.

(Note: The evidence presented in the above complaints, which were heard upon a common record, relates principally to the rates and transportation conditions bearing

upon the shipment of cattle and other forms of edible livestock in the western district, and to the limited extent that [fol. 725] such evidence bears upon the rates and transportation features incident to the shipment of horses and mules same is not directed to the rates and transportation features incident to the shipment of horses, mules, asses and burros to, from, and between points in so-called southwestern territory or, more specifically, in that part of the territory involved in the order of the Interstate Commerce Commission entered under date of December 11, 1933, which is assailed in this cause and which excludes that portion of said order whereby rates on horses, mules, burros and asses are prescribed in the territory within the issues raised by the complaint in No. 12268. No complaint against nor attack upon that portion of said order in prescribing rates on horses, mules, burros and asses between points in the territory involved in the issues raised in No. 12268 has been or is here made and no issue before the Commission under the evidence presented at the foregoing 1921 hearing in said Docket Nos. 12146 and 12268 is now before the Court or was involved in the district court in said complaints.)

(The hearing in the above entitled matter was closed at 5:00 o'clock P. M., June 14, 1921.)

[fol. 726] EXHIBIT JJ

Before the Interstate Commerce Commission

Docket No. 13273

In the Matter of Interstate and Intrastate Rates for the Transportation of Ordinary Livestock, in Carloads, from Points in Nebraska to Omaha and South Omaha, Nebraska, in Their Relation to Rates on the Same Commodity, in Carloads, from Points in Nebraska to Kansas City and St. Joseph, Missouri, and Sioux City, Iowa

Omaha, Nebraska, May 16, 1922.

Before Wm. A. Disque, Attorney-Examiner, Interstate Commerce Comn.; Thorne Brown, Commissioner, Nebraska State Railway Comn.

Met pursuant to notice.

APPEARANCES

(Omitted, being as recited in 89 I. C. C. 444.)

PROCEEDINGS

Exam. Disque: The Interstate Commerce Commission has assigned for hearing at this time and place its Docket No. 13273, involving rates on live stock from all Nebraska stations to Missouri River markets, Sioux City, Omaha, South Omaha, St. Joseph, and Kansas City.

Mr. Thorne Brown is present as Commissioner for the Railroad Commission of Nebraska and will sit with me in the hearing of this case under the rules prescribed by the Commission not long ago. As I understand it, the Nebraska Commission is not appearing as an advocate in this case.

Mr. Rynder: Might I inquire whether it would be possible at this time to have any definition, even though perhaps general, as to just what is involved in this case? Perhaps you can state it a little clearer, but it is my understanding that, under the procedure you are following [fol. 727] here affecting intrastate rates, evidence would be admissible only tending to show that some interstate rate is unjustly discriminatory by reason of comparison with some intrastate rates, and that would be a much smaller issue, for instance, than one that would involve reasonableness and propriety of every rate from Nebraska and west of these four markets.

Exam. Disque: All I know is what is contained in the order, and it states that this proceeding is for the purpose of prescribing such rates from and to such points of origin and destination as will remove any undue prejudice or undue preference and so forth at all of these markets. I assume from that that the Commission intends to prescribe rates from Nebraska to all of these markets, probably a common scale or a common set of rates.

Mr. Rynder: Would it be your understanding that the Commission would prescribe rates from Nebraska to Omaha on purely intrastate business except as it shows unjust discrimination against interstate rates; in other words, it would not prescribe them as a matter of original jurisdiction?

Exam Disque: It would prescribe intrastate rates from Nebraska points to Omaha if the intrastate rates were

found to result in undue prejudice and undue discrimination against interstate commerce.

Mr. Rynder: Then as an initial proposition we are not concerned here with the reasonableness of the rates?

Exam. Disque: Intrastate, no.

Mr. Rynder: Intrastate.

[fol. 728] Exam. Disque: We may be concerned with the reasonableness of the rates from Nebraska to Sioux City and Nebraska to St. Joseph and Kansas City. Those rates may become the measure of the intrastate rates in Nebraska if unjust discrimination or undue prejudice is found to exist. Is that clear?

Mr. Rynder: Yes.

(Note.—The evidence presented in the above proceeding relates principally to the rates and transportation conditions bearing upon the shipment of cattle and other forms of edible livestock from points in Nebraska to Missouri River markets, Sioux City, Omaha, South Omaha, St. Joseph and Kansas City, and to the limited extent that such evidence bears upon the rates and transportation features incident to the shipment of horses and mules from such stations to said Missouri River markets same is not directed to the rates and transportation features incident to the shipment of horses, mules, asses and burros to, from, and between points in so-called southwestern territory or, more specifically, in that part of the territory involved in the order of the Interstate Commerce Commission entered under date of December 11, 1933, which is assailed in this case and which excludes that portion of said order whereby rates on horses, mules, burros and asses are prescribed in the territory within the issues embraced in No. 13273. No complaint against nor attack upon that portion of said order prescribing rates on horses, mules, burros and asses between points in the territory embraced in No. 13273 has been or is here made, and no issue before the Commission under the evidence presented at the foregoing 1922 hearing in No. 13273 is now before the Court or was involved in the District Court in said proceeding.)

(The hearing in the above entitled matter was closed at 5:10 o'clock P. M., May 19, 1922.)

[fol. 729] EXHIBIT KK

Before the Interstate Commerce Commission

Docket No. 12358

TEXAS LIVESTOCK SHIPPERS' PROTECTIVE LEAGUE et al., Complainants,

vs.

DIRECTOR GENERAL, as Agent, A. & S. RAILWAY COMPANY et al., Defendants

Docket No. 11018

WICHITA BOARD OF COMMERCE et al., Complainants,

vs.

DIRECTOR GENERAL, A. & W. RAILWAY COMPANY et al., Defendants

Docket No. 13001

CHAMBER OF COMMERCE OF KANSAS CITY, Mo., Complainants,

vs.

ALEX. & WESTERN RAILWAY COMPANY et al., Defendants

Docket No. 13619

ROSS BROTHERS HORSE & MULE COMPANY et al., Complainants,

vs.

UNION PACIFIC RAILROAD COMPANY et al., Defendants

Docket No. 13627

BURNETT-YOUNT HORSE & MULE COMPANY et al., Complainants,

vs.

A. & S. RAILWAY COMPANY et al., Defendants

[fol. 730] I. & S. No. 2389

Rates on Horses and Mules to, from or Between Southwestern Points

I. & S. 1483

Horses and Mules from Kansas City, Mo., and Wichita, Kan., to New Orleans, La., Memphis, Tenn., and Other Points

No. 13273

Nebraska Live Stock Cas.

Docket No. 12268

BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF SOUTH DAKOTA, Complainants,

v.

CHICAGO & NORTH WESTERN RAILWAY COMPANY et al., Defendants

Fourth-Section Application No. 461.
Fourth-Section Application No. 462.
Fourth-Section Application No. 621.
Fourth-Section Application No. 673.
Fourth-Section Application No. 678.

Kansas City, Mo., October 1, 1928. 10 o'clock A. M.

Before R. S. Simons, W. M. Carney, and P. F. Mackey, Examiners

Met pursuant to notice.

APPEARANCES

(Omitted, being as recited in 195 I. C. C. 417.)

[fol. 731] PROCEEDINGS

Examiner Simons: I will now state to you gentlemen what I understand to be the issues in this case and the present situation calling for this further hearing.

In Docket No. 12358 and consolidated cases reported under the title of Horse and Mule Rates in the Southwest, 1924, 93 I. C. C. 379, the commission prescribed a scale of rates for application between Fort Worth and points in the states of Kansas, Oklahoma and Arkansas; Texas common-point territory; that part of Louisiana west of the Mississippi River; that part of Colorado on and south of the lines of the Chicago, Rock Island & Pacific and the Union Pacific and east of the main line of the Colorado & Southern extending south from Denver through Pueblo and Trinidad; and that part of New Mexico on and east of the Colorado & Southern.

The carriers were authorized to publish these rates, which we will call the Southwestern Horse and Mule Scale, via all routes (subject to certain fourth-section restrictions) between the markets of Fort Worth, Wichita, Kansas City, St. Joseph, St. Louis and Oklahoma City on the one hand the territory above described on the other.

This in effect authorized the publication of the Southwestern Horse and Mule Scale for General application between the markets above named and points in that part of the Southwest described above.

Between the markets named and points in Texas differential territory and New Mexico the commission in I. & S. [fol. 732] No. 2389 Rates on Horses and Mules, 102 I. C. C. 87, directed that the rates should be constructed by adding to the Southwestern Horse and Mule Scale certain mileage differentials therein provided. The Southwestern Horse and Mule Scale became effective on May 20, 1925, except as to rates from or to points in Kansas, Colorado and Southern Missouri, respectively, application of the Southwestern Horse and Mule Scale between points in the territory last described was postponed indefinitely by order of March 16, 1925, following the receipt of a joint petition for further hearing and reargument submitted by the Kansas Public Utilities Commission and the Chamber of Commerce of Kansas City, Mo. Further hearings were had at Topeka, Kas., on May 15 and 16, 1925, before former Examiner Eshelman, who on November 20, 1925, submitted a proposed report therein. In this report Mr. Eshelman proposed two scales of rates, the one for application in that part of Missouri lying south of the Missouri River and on and north of the Main Line of the Rock Island between

Kansas City and St. Louis, including within this territory (called territory A), East St. Louis and National Stock Yards, Ill.; the other, for application between points in Kansas and that part of the state of Missouri lying south of the line of the Rock Island which is designated in the report as Territory B.

[fol. 733] Certain rules were set forth for the construction of rates between territories A and B. In subdividing Missouri along the east and west line of the Rock Island into two differently rated territories Mr. Eshelman followed the decision of the commission in the Dimmitt-Candle-Smith case, 47 I. C. C. 287.

Exceptions having been filed to the Eshelman report, and objections having been received to the rate of progression of the Southwestern Horse and Mule Scale prescribed in 93 I. C. C. 479, the commission upon further consideration issued an order under date of January 4, 1926, reopening these proceedings for further hearings with respect to the reasonableness, lawfulness and propriety of the rates and minimum weights in connection therewith.

On the same date Dockets Nos. 13273, the Nebraska Livestock Case, reported in 89 I. C. C. 444, involving rates on livestock from points in Nebraska to Omaha and South Omaha, in their relationship to the rates from Nebraska origins to St. Joseph, Kansas City and Sioux City, Ia., and the so-called South Dakota Case, Docket No. 12268, reported in 77 I. C. C. 451, and bringing in issue the rates on livestock from South Dakota origins to destinations in Minnesota, Wisconsin, Illinois, Iowa and more particularly to destinations in Missouri and Nebraska were reopened for further hearing, but only with respect to the rates on horses and mules therein found reasonable and nonprejudicial.

[fol. 734] Subsequently, by order of February 8, 1928, the orders of March 16, 1925, and January 4, 1926, were restricted to rates for the future only. In compliance with these orders these cases have been set for further hearings on this date.

The issues, as I understand them are, first, the reasonableness and propriety of the existing rates and the mileage scale now in effect between points in the territory previously outlined, and more particularly described in the appendix on page 498 of the report on Horse and Mule Rates

in the Southwest, 1924, 93 I. C. C. 479; and second, the reasonableness and propriety of the existing rates on horses and mules from and to the territories defined in the Nebraska and South Dakota cases previously mentioned.

It is reopened as to the Southwestern scale because of the objections as to the rate progression of that scale, and also on objections from the Southwestern interests in prescribing any different scale of rates for the territory north of Oklahoma—that is, in Kansas, Southern Missouri and Colorado east of the Colorado common points—such as was proposed in Examiner Eshelman's report.

So we have the whole scale reopened again; the whole territory, rather, reopened.

Whatever rates we might make from Kansas to the Missouri River markets, necessarily would be affected by the Nebraska-rate situation; and in view of the fact that the [fol. 735] commission prescribed a scale in the Nebraska case, removing the undue preference which was then existing in favor of Omaha, the commission has reopened the Nebraska case for the purpose of realigning those rates with such rates as may be prescribed from Kansas.

Mr. Outlaw (Attorney for Atchison, Topeka & Santa Fe Ry. Co.): Mr. Examiner, it was our impression that the state rates of Texas, Oklahoma, Kansas, Missouri, Arkansas and Louisiana, the entire adjustment, state and interstate, in the southwestern states, was before the commission in this proceeding.

Examiner Simons: I doubt whether the issues are broad enough to cover it. I am going to hear such evidence on that situation and determine afterwards whether I can find that from the issues as stated in the original complaint that we can say those rates have been brought directly in issue.

Mr. Outlaw: Now, I can't say as to Arkansas or Missouri, but in the former hearings in this case, the state commissions of Texas, Kansas and Oklahoma have set, respectively.

Examiner Simons: They have?

Mr. Outlaw: Isn't that right, Mr. Tedrow?

Mr. Tedrow (Transportation Commissioner, Kansas City Chamber of Commerce): Kansas has.

Mr. Outlaw: And Texas and Oklahoma?

Mr. Tedrow: I don't know about Texas and Oklahoma. I know Kansas has.

Examiner Simons: Kansas sat because of the complaint [fol. 736] before the Kansas Commission, and Texas would sit because of the complaint before the Texas state commission.

Mr. Tedrow: Well, now, for instance, take the Kansas rates: They were brought into issue because of a complaint made by the Texas people alleging discrimination against the Kansas rates, and a finding by the Interstate Commerce Commission to that effect, and that resulted in the co-operative hearing between the Kansas commission and the Interstate Commerce Commission, but it is not clear in my mind that the Oklahoma rates nor the Texas rates are in here.

Examiner Simons: Well, so far as the Texas rates are concerned, I understand that if they are in issue they are in because of a letter written by the chairman of the Texas state commission to the Interstate Commerce Commission —Commissioner Aitchison, I think, replied to it—advising that there was pending before the Texas state commission an application by the southwestern lines for the putting into effect intrastate in Texas the same scale as applied interstate, and they asked for a co-operative handling of the situation.

Now, if you consider that co-operative handling of the situation means that the evidence here taken is to be used jointly with the state of Texas, I consider that they are in issue.

Mr. Pelton (appearing for the Texas Livestock Shippers Protective League): This application, filed by the carriers with the railway commission of Texas for the application of the Southwestern scale and 12358 scale, was held up by [fol. 737] the Texas commission, I believe, on application of the carriers pending the disposition of these cases.

Examiner Simons: Yes, sir.

Mr. Pelton: So far as I know the railway commission of Texas has never taken any part in these proceedings, but I don't understand that the Texas rates are involved in these proceedings in any way.

Examiner Simons: The only way that you can say they have taken part in these proceedings is by letter to the commission—stating that there is pending such an application

by the carriers and they would like to have a co-operative handling of the case.

Mr. Pelton: But they have never taken part in any hearing.

Mr. Outlaw: Mr. Examiner, I would like to make this point: That irrespective of any question of a co-operative nature between the state commission and the Interstate Commerce Commission, or any co-operative handling in this case, the state rates are in issue in all of the states I have enumerated by reason of Section 3 or 13 allegations in the complaints that are before the commission now, whether those states are here represented or not, or whether they reopened the cases on their own dockets as to intrastate rates or not.

Mr. Tedrow: Mr. Outlaw, and Mr. Examiner, please: I [fol. 738] don't understand there has been any allegations made as to the Texas state rates in any complaints. There is the difference.

Mr. Outlaw: My impression, there was; that the state rates in all of the states had been put in issue by the Interstate complaints.

Mr. Tedrow: No, I don't think that's so.

Mr. Outlaw: Well, the complaints will speak for themselves on that.

Examiner Simons: Well, I would like, Mr. Outlaw, if you would point out specifically to me the allegations wherein you consider the state rates are brought directly in issue by the complaints. Can you find them for me and on your brief, if necessary, point them out? I have read the original complaint very carefully. There are so many of them that perhaps I may have overlooked it in some of the other complaints.

Mr. Outlaw: I will do that.

Mr. Tedrow: I think we will agree, Mr. Examiner, that whatever is done by the Interstate Commerce Commission with regard to the Interstate rates must be eventually done in connection with the state rates in the various states.

Examiner Simons: I would think so. That is the impression I gather.

Mr. Tedrow: Yes.

Examiner Carney: Mr. Pelton, in your original complaint in 12358, there was no fourth section allegation, was there?

[fol. 739] Mr. Pelton: No, sir; I don't think there was.

Examiner Carney: As I read it, it was confined to Sections 1, 2 and 3. Is that correct?

Mr. Pelton: Yes.

Examiner Simons: Now, Mr. Outlaw, it may be that it is from this language of the commission in 93 I. C. C. 479, that you get that impression: I am reading from the report:

"They also allege that the lower intrastate rates within, and the lower interstate rates between, the states of Arkansas, Kansas, Louisiana, Oklahoma, New Mexico, Nebraska, Colorado and Arizona as indirectly prejudicial to Fort Worth shippers and preferential to shippers within those states."

That is a Section 3 allegation.

Mr. Outlaw: Well, Mr. Examiner, not having all these various complaints before me at this time, I had in mind particularly a letter addressed by Secretary McGinty to Mr. F. E. Andrews, dated February 27, 1926, one paragraph of which is:

"Following the issuance of the supposed reports of Examiner Eshelman covering the Kansas rehearing, the commissions of Texas, Oklahoma and Arkansas ask that they be allowed to join with this commission in the co-operative disposition of these cases."

Examiner Simons: Yes, but that isn't a Section 13 allegation. The complaint hasn't been broadened.

Mr. Outlaw: Well, I merely wanted to find out whether [fol. 740] they were here or not.

Examiner Simons: Yes.

Mr. Thompson (Attorney for The Texas and Pacific Ry. Co.): If you allege a violation of Section 3, that intrastate rates are in violation of Section 3, that puts them in issue.

Examiner Simons: Oh, yes. The rates are indirectly in issue at least.

Mr. Thompson: As I understand it, you can't have a violation of Section 13. That is merely a procedural section. The violation comes in the undue prejudice resulting from Section 3.

Examiner Simons: That is with respect to the procedure, yes; Section 13. And the question of this commission issuing a joint report with the state commission is not covered

by the complaint, because there is not a Section 13 allegation in the complaint.

Mr. Thompson: The point I make is this: That when they allege that the state rates are unjustly prejudicial and preferential, in violation of Section 3, that puts them in issue. At the time the Shreveport decision was issued, there was no Section 13, but the commission issued its order.

Examiner Simons: Yes. Undue prejudice is in issue as far as the state rates are concerned.

Mr. Thompson: And that would put them in issue.

[fol. 741] Mr. Tedrow: Well, it is clear in my mind that the Kansas state rates and the Nebraska state rates are in issue, but it is not clear to me that the Oklahoma nor the Texas rates are in direct issue in this case.

Examiner Simons: I think Mr. Tedrow's statement is correct. They are indirectly in issue, but they are not directly in issue. And, as I repeat, the situation with respect to the Texas rates was brought about by a letter from the Chairman of that commission stating that there was pending an application by the carriers to put into effect in Texas intrastate the Southwestern horse and mule scale. That would be a matter better for their disposal and not for ours.

For the information of you gentlemen, I have brought on with me 4 copies of an exhibit, or summary, rather, published by the bureau of statistics showing the traffic density by states and geographic divisions of the various states, and if there is any testimony to be given along the lines of traffic density, this might be very helpful.

All right, Mr. Pelton.

B. D. Pelton was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct examination (pro se):

The Witness: Our interest in this case is, as a general proposition, the interstate rates and intrastate rates which are now in effect and are unfavorable or discriminatory to the Fort Worth interests, and also the differential rate ap-

[fol. 742] plicable in West Texas and through New Mexico.

We do not include the Texas state rates nor the Oklahoma rates. I will offer first Exhibit No. C-168. On page No. 1 of this exhibit is a statement of the freight and car performance and unit cost of freight operations on certain operating divisions of the Atchison, Topeka & Santa Fe Railway lines for the years ended June 30, 1915, and December 31, 1924.

Page 2 is an analysis of that statement of page 1, separating certain divisions into operating districts, the divisions in differential territory being shown first—Pecos, Plains, and Slaton; then the other Texas lines, northern and southern divisions of the Santa Fe; the third section, the divisions west of Kansas City, and last, the divisions east of Kansas City. I should have stated that this covers the Santa Fe system east of Albuquerque, N. M.

I would like to point out a few situations on this exhibit. The first is that in differential territory, the total operating expenses per 1,000-ton-miles is less than all over divisions on the system except east of Kansas City, and the net operating expenses per thousand ton-miles is less in the differential territory than all other lines of the system west of Albuquerque. The same applies to the fuel consumption except as to the northern and southern divisions. The gross ton-miles per train mile is greater in differential territory than other divisions of the system except east of Kansas City.

[fol. 743] The first sub-division there of the Pecos, Plains, and Slaton divisions is what we refer to as the differential territory, operating as a differential territory.

The gross ton-miles per mile of road operated, as will be noted, in the differential territory is greater than any other section of line west of Kansas City. The increase in the gross ton-miles per mile of road, 1924 over 1915, is greater in all divisions except east of Kansas City.

Page 3 of this exhibit is a similar statement to page 1, covering the year ended December 31, 1925. At the bottom of that page is an analysis of that statement, and it shows in a general way for the year 1925 the similar conditions as are shown on the preceding page.

Page 4 of this exhibit is a similar statement for the year ended December 31, 1927. I have made no analysis of this case for the year 1927, but in a general way I find that the figures run along the same lines, comparatively, as be-

tween differential territory and other lines in Texas and other lines out of Texas. For instance, lines, Kansas City to Dodge City, and down through the Panhandle.

Page 5 shows the main and branch-line mileage of the Atchison, Topeka & Santa Fe by operating divisions for the year 1927. In the recapitulation I would like to note two or three corrections there under "Differential lines." The total should be 2,143 instead of 2,142. This correction [fol. 744] is made because of an error that was not noticed until after it was drawn up. Your percent of branch lines should be 39.7 miles instead of 39.2. Under mileage total, other lines, it should be 4,239 instead of 7,533. The system totals under that is 7,534 instead of 7,533.

It will be noted under the recapitulation of this statement that the Santa Fe system is divided almost exactly 50-50, main line and branch line.

Underneath we have the differential lines. That should be 39.7 instead of 39.2, compared with all other lines of the system, 54.1. The object of this exhibit is as shown thereon.

Page 6 of this exhibit, the first section shows the freight-ton performance and unit cost of freight operation of the International-Great Northern, for the year ended December 31, 1925, these figures being obtained from the Railroad Commission of Texas.

The differential territory, as included in the San Antonio division, is 120.7 miles, and it will be noted here that the gross ton-miles per mile *per mile* of road operated was somewhat less than for the Gulf division in common-point territory, the ratio being 95. The net ton-miles per mile of road operated is also somewhat less.

The per train-mile costs are lower, while the net ton-mile operating expenses are just slightly higher in the differential territory as under the San Antonio division. [fol. 745] That represents the figures for the division, but there is 120.7 miles of that division in the differential territory. The total length of the division is around 150 or 160 miles from Taylor.

The second section of this page shows the freight train and car performance for the Fort Worth & Denver City Railway for the year 1924. Now, these figures are divided as at Childress, Texas. Now, the costs per net-ton per mile is only 1.2 cents greater north of Childress, which includes differential territory, than south of Childress in

common-point territory; while the cost per freight-train-mile was 54.1 cent greater south than north.

On this page is shown that the International-Great Northern Railroad contains 564.6 miles. The differential territory of the I.-G. N. is 120.7 miles out of this 564 miles, which is in the San Antonio division. These figures were obtained from the Railroad Commission of Texas. The Fort Worth and Denver figures were obtained in 17,000, Ex Parte 87.

On page 7 are the mileage and cost statistics for the years 1926 and 1927 of the International-Great Northern Railroad. That is a statement just as received, and reproduced, and really there is nothing shown on there except that the train-mile costs are less in differential territory. The I.-G. N. figures were obtained through the Railroad Commis-[fol. 746] sion of Texas, requested by the State Commission of Texas and transmitted to me, and photostatically reproduced except for the information that I put on. You can see the difference in the type.

On the same page 7 are operating statistics for the Galveston, Harrisburg & San Antonio Railway Company for the year ending December 31, 1926. It shows the different divisions of that line and the differential lines had included in them the El Paso division and 177 miles of the Victoria division; the entire El Paso division up to within the first station west of San Antonio I believe, is the line. It does not include San Antonio nor San Antonio on the I.-G. N.

On page 8 we have a statement showing miscellaneous operating statistics for Class 1 roads operating in the western district, the purpose of the exhibit being to show the continued improvement for 1926 over 1925, in operating conditions throughout the western district, and particularly the southwestern region.

The column, "Rate of return," is the actual figure, by taking the sums of the net operating income and the total investment figures, and figuring it just the same as though you would take an individual item. It is not an average. 4.7 per cent is the percentage that the total net operating income is of the total investment shown in the investment column.

The next section of this page is a statement showing the [fol. 747] improved results of the principal southwestern lines and lines operating in the western district. It is shown here that there has been an increase in these prin-

cipal lines, nine roads, of $18,484,841, or 14.2 per cent. In the regional figures below, that increase is 9.5 per cent.

On page 9 we have a statement showing the rate per cent income from operation of railroads in Texas. This statement also shows the roads in Texas in the hands of the receivers, none of which are differential lines. The object is to show the earnings of the Texas carriers, collectively and comparatively, between lines operating in differential and common-point territory. This is the rate of return for 1926.

The next section on this page is a statement showing the improved operating condition in Texas. The object of this exhibit is to show the marked improvement in our operating conditions in Texas since 1917. Under "Operating income" on this statement, that those figures are whole dollars, the two ciphers being omitted.

Page 10, statement of operating statistics for the northwestern and southwestern lines, the object being to show that the operating conditions are not more favorable on the northwestern lines.

At the bottom of the same page is a statement of the progress of railroad mileage, tonnage, earnings, etc., in Texas since December 31, 1919, the object of it being to [fol. 748] show the improved conditions and prosperity of the Texas railroads.

On page 11 is a comparison of the distance rates on horses and mules with the Southwestern or 12358 scale, the Shreveport scale, and various M. K. T. scales in Kansas and Missouri—between Kansas and Missouri.

At the bottom we have an illustration of the advantages of Kansas City and Wichita over Fort Worth in shipping horses and mules through those concentrating points from Kansas producing points to Louisiana points. It shows on the first section there from Emporia, Kas., to Alexandria, La., through Kansas City, a difference of $27.25 a car in favor of the Kansas City concentrating point. In the second section it shows a difference of $26.35 per car on a shipment from Great Bend, Kas., to Alexandria, La.

Below, we have an illustration of the advantages of Kansas City, St. Louis and Denver over Fort Worth, compared to the 12358 scale.

On page 12 we have an analysis of the rates on horses and mules between New Mexico points and points in Texas in differential territory, which shows that the lines in

that territory from points up in the Panhandle on the Panhandle and Santa Fe, as far south as Laredo are voluntarily carrying rates and have been for a number of years that are lower than the 12358 scale with or without the differentials being added.

Page 13 is a statement showing the human population of—

* * * * * * *

[fol. 749] —in the Texas differential territory during the past few years.

Section 3 of this page is a statement showing the human population per mile of railroad, the object being to show the marked increase in Texas differential territory compared to other sections in the western district. It also shows the population per mile of railroad, 1920 and 1926, and the increase. The source is shown on the statement.

That is all of this exhibit.

The purpose of this exhibit is to show conditions in the southwest as affecting rates on horses and mules and also to show the different scale of rates in the southwest, particularly Kansas and Missouri, as compared with the 12358 scale which the Fort Worth shipper is paying. It also is to show the development in West Texas, in which territory the differential was placed on the carriers, and to show the unreasonableness of the differential on horses and mules in that territory.

The first ten pages of this exhibit are introduced merely to show operating conditions and traffic density of the lines in that territory; there are no rates shown in those ten pages. We have several lines in northwestern territory compared with the lines in southwestern territory. There is nothing in the first ten pages, with that exception, except operating statistics for southwestern lines including the Santa Fe east of Kansas City. "Mile of road operated" is the distance between two points as distinguished from the miles of track operated. There would be some differ-
[fol. 750] ence if you used the miles of track operated.

The next exhibit is Complainant's Exhibit C-169.

There was placed in operation, according to the railroad commission of Texas' annual report for 1927, on page 28, 90.06 miles in differential territory, none in common-point territory, the mileage of the new lines constructed being

shown on page 2 of this exhibit. There was also opened in 1927, 57.5 miles of the Rock Island in differential territory, 10.1 miles of the Santa Fe, and 62 miles of the San Antonio and Arkansas Pass in differential territory.

Against those figures, a total of 211.66 miles opened in differential territory, there was 35 miles of the Houston North Shore Railroad, which I understand is an electric line, opened for operation in 1927. That line is mainly a passenger line but handles freight also. The gist of my testimony is that there should be no differentials added to the rates, to make the rates to differential territory. Our object is to show the rapid development of West Texas in every form. We think the commission was in error in adding or in prescribing differentials to the Southwestern scale for the rates on horses and mules to differential territory and New Mexico. The commission did not originally prescribe differentials in West Texas but the carriers published the differentials in I. & S. 2369 and they were suspended, and the commission allowed a differential around 50 percent of that which the railroads had formerly published.

[fol. 751] Pages 3 and 4 of the exhibit are a statement showing the number of farms that have been created out of the large cattle ranches, and otherwise started by new settlement, by counties in Texas, differential territory in 1925, vs. 1910 to 1920, the purpose being to show the vast amount of agricultural developments in Texas differential territory during that period. The totals on page 4 figure an increase of 72.8 percent in 1925 over 1910, fifteen years.

Pages 5, 6, 7, 8 and 9 show the agricultural production in Texas differential territory for the principal crops for the years 1924 and 1919, the object of these pages being to show the great agricultural development in that territory in the period 1919 to 1924, and on page 8, the total increase, figures 73.1 per cent.

Page 9 is a statement showing the actual and potential production of fruits and vegetables in the lower Rio Grande Valley, comprising the three counties of Hidalgo, Cameron and Willacy, and part of Starr, which are located in Texas differential territory.

The first section on that page shows the number of cars shipped in the truck season, the cars being, 1926 over 1919, 14,429 or an increase of 1,195.1 per cent.

The lower section of that page shows the citrus trees planted in that section, the object being to show the rapid development of the Rio Grande Valley in differential terri-
[fol. 752] tory and in this section the increase, 1926 over 1918, and prior thereto, was 78.9 per cent.

At page 10 we have a statement showing petroleum production in Texas differential territory for the years 1920 to 1927, the figures being per thousand barrels of 42 gallons, the object of the exhibit being to show the enormous increase in the production of petroleum in differential territory. It also shows the state total, and the increase for the year 1927 over 1920 figures 392.02 per cent, while for the state total production the increase was 114 per cent.

On page 11 are the automobile registrations for the State of Texas for the years 1923 and 1927, obtained from the State Highway Commission, the object of this page being to show the rapid development and increase in prosperity in differential territory, the increase in automobile registrations in differential territory being 114.8 per cent as against 55.3 per cent in common-point territory in Texas.

Page 12, we have a statement showing the increased traffic density of the principal lines in Texas during the period 1921 to 1925, net ton-miles per mile of road per day, and the increase.

On page 13 we have the operating results on the principal lines in differential territory compared with the principal lines in common-point territory, and the rate of return, net operating income, and the total investment in roads and
[fol. 753] equipment, etc.

On page 14 are the operating results of the Texas lines, showing the percentage increase, 1925 over 1921, and on the lower page the rate of per cent of net income.

Page 15 is a statement of lines operating in differential territory, showing the miles in differential territory.

I would like to call attention to a few differential features as to livestock and horses and mules. On the Rock Island the class differentials east of Amarillo and special differentials north of Stanford were abolished, January 24, 1918, intrastate, and December 15, 1927, interstate. On the Motley County Railroad a 2½-cent differential on livestock was canceled August 2, 1927. This intrastate action was by the Railroad Commission of Texas for removing these differentials. The differential was ordered abolished by the three commissions.

In January, 1927, the Railroad Commission ordered the removal of all differential rates on the main lines of the Panhandle and Santa Fe. At the present time there are no differentials on any lines in Texas on livestock except on the Pecos Valley Southern, and now a T. & P. subsidiary, which is 5 cents on edible livestock; nothing on horses and mules. And on the Uvalde & Northern, a differential on livestock of 2½ cents a hundred. Those are the only differentials on livestock in Texas today.

On November 1, 1926, the Railroad Commission of Texas [fol. 754] canceled all special differentials and made single-lines rates apply between points on the Missouri Pacific and points on the Rio Grande City, San Benito and Rio Grande Valley, and other points on the Missouri Pacific lines. On March 27, 1926, the Railroad Commission of Texas in some instances abolished and in others materially reduced the differentials on livestock. No differentials being on horses and mules on the K. C. M. & O. of Texas.

On page 16 we have a comparison of rates from Kansas, Nebraska, & Colorado interstate with the 12358 scale, and I would point out here that the 12358 scale is higher than all others up to and including 50 miles. From 50 miles to and including 250 miles, the 12358 is higher than the Kansas and Nebraska and lower than Colorado and interstate, from 250 miles to and including 700 miles, it is higher than all other scales shown—the 12358 scale is higher.

The object of this exhibit is to show the unreasonableness of the 12358 scale, especially for the long hauls—say, over 250 miles.

On page 17 we also have some rate comparisons, the object of which is to show the unreasonable difference between the rates in and between Kansas and Missouri, and the 12358 scale.

On page 18 we also have rate comparisons between Omaha, St. Louis and various points shown, the object be- [fol. 755] ing to show that the carriers are maintaining rates voluntarily between Omaha and St. Louis and Kansas and Oklahoma points, almost to the Red River, which are lower than the 12358 scale.

On page 19 we also have rate comparisons between Omaha, Neb., and points shown, compared with the 12358 scale, the object being the same as the preceding page, and I call attention to the bottom section of this sheet showing that the Omaha-Kansas City arbitrary formerly published

in Southwestern lines' series 29, has been canceled in Southwestern lines I. C. C. 1949, effective July 1, 1927, it being cited therein that the rates would be found in southwestern lines I. C. C. 1886. However, the rates were not produced in I. C. C. 1886 nor the reissues thereof, I. C. C. 1953, and leaving us now the combination on Kansas City to pay on horses and mules from Omaha to Fort Worth.

Now, this differential has been in effect at least since September 20, 1919, in I. C. C. 1299, at that time being $27.50. It was increased August 25 to $37 and reduced January 1922, in I. C. C. 1491, to $33.50, where it has remained until it was canceled July 1, 1927; the result being that the rate was raised from $33.50 to $50.50 per standard car.

There has always been an arbitrary upon Omaha to Kansas City applicable to shipments beyond or to Texas points, which, since the inauguration of the 12358 scale, had been added to the 12358 scale to make the through rate from [fol. 756] Omaha to Fort Worth. That arbitry has been canceled and the local rate, which is $50.50, must be added to the Kansas City to Fort Worth rates.

On pages 20 and 21 we have freight operating expenses on the Texas and Pacific Railway by divisions and the system as a whole.

On page 21 is a comparison of the Rio Grande division, which includes all of the mileage in Texas differential territory being west of Big Spring to El Paso, 347.5 miles, and a comparison of freight operating expenses of the Rio Grande division with other divisions and the system is shown on page 21.

In explanation, under "Comparison, Rio Grande higher," there will be found the figure "2," which refers to Column 2, Fort Worth division, on page 20. And that item, "Maintenance of equipment per 1,000 gross ton-miles," on the Rio Grande division, is higher than on the Fort Worth division.

But under "Comparison, Rio Grande division, lower," we find 1, 3 and 4, which indicates that that same item of maintenance of equipment per thousand gross-ton-miles was lower than the Louisiana and Denton division, and the system. And so on through to the total where it will be noted that the Rio Grande division was under "Lower," 1, 2, 3 and 4, which indicates that all operating expenses on the Rio Grande division was lower than on any other division [fol. 757] or the system as a whole.

The next is Exhibit No. C-170. The first page is a comparison of rates in Kansas and between Kansas and interstate points with the 12358 scale; and on the next page will be found a comparison of the distance and specific rates in Kansas. And on page 3, illustrations as between Superior, Neb., Thackerville, Okla., and Fort Worth, towards Superior, Neb., showing this difference. And also in the second section shows the rates and mileage between Superior, Neb., and the rates applicable northbound and southbound.

That is, from Superior, Neb., it shows a rate to White Eagle, the half-way point, which on the south end of this haul is some $16 greater than the north end of the haul. At White Eagle in rates are equal, while we proceed to Mulhall, 35 miles further, before we find equal rates.

On the lower section we find a comparison of rates showing the revenue per net ton-mile under different scales on a shipment as between Des Moines, Ia., and Kansas City, Nemo, Ill., on the Santa Fe, and between Des Moines and Kansas City via the direct line, Chicago Great Western.

The main idea of this portion of the exhibit is to show that at a mid-way point between Superior and Fort Worth that the Superior shipper has an advantage of approximately $16. over the Fort Worth shipper for the same haul; the rate from Superior to White Eagle being $85.85 for 291 [fol. 758] miles, and the rate from Fort Worth to White Eagle being $101.20 for 292 miles. Then it extends the rate on down to Mulhall to show where the rates become equal, and the difference in mileage as between White Eagle and Mulhall is $35.

At the bottom of the page the rate from Des Moines to Kansas City is restricted to the Nemo routing and Santa Fe; the distance is 451 miles, the rate $73.70, applying only to the route via Nemo. The C. G. W. is the direct line, 119 miles and under the 12358 scale the rate is 26 cents.

On page 4 we have comparisons of the rates published in Rock Island tariff, I. C. C. No. C-11588. These are mileage scales, but I checked over quite a number of specific rates in that tariff, and I found that specific rates in Item 940, except the first 5 stations, are lower than the distance rates under Note 2. I also checked quite a large number of specific rates in the Santa Fe, and M. K. T. and Rock Island tariffs, and I found the same condition to exist; that is, the specific rates were generally lower than the mileage rates.

On page 5 we also have a comparison, a similar situation as on page 3, on the Rock Island, starting at Calhoun, Colorado and coming into Kansas. We find the rates in the Rock Island tariff, I. C. C. 11588, as compared with the 12358 scale, the rate at 608 miles and equal mileage at 371.

Page 6 is also a comparison of rates on the Union Pacific, U. P. tariff, I. C. C. 3851.

[fol. 759] On page 7 is a statement of traffic density by states for the year ending December 31, 1927. I would like to point out here the figures for East Texas common-point territory as compared with the traffic density in New Mexico, Kansas, Arkansas, Nebraska and Colorado.

Examiner Simons: I am going to ask Mr. Pelton a question which I desire to direct to all of you gentlemen. It is this: Suppose the commisson in 17000 prescribes a number of scales, for example, for this territory on livestock,—now, this is a supposition entirely on my part—which will eliminate a great many of these short-haul scales that are in effect in this territory. Do you think it would be proper to relate the horse and mule rate to the livestock rates, say, beef catttle rates, making them a certain percentage over, as the commission has done in several of these cases.

I just want to get the views of you gentlemen who may testify as to whether you think that will cure the situation or not. There is, as you know, a scale which has been prescribed which was about 120 per cent in the Dimmitt-Caudle-Smith case, and in the South Dakota and Nebraska cases they prescribed 115 per cent of the livestock rates.

The Witness: I could conceive of no nearer relationship from the transportation standpoint as between edible livestock and horses and mules. I would not like to say that 120 per cent would be reasonable but a relationship not to [fol. 760] exceed 115 per cent is desirable, based upon transportation conditions. I believe 15 per cent would cover all the difference in the transportation features on horses and mules and other livestock.

(Exhibits C-168, C-169, C-170, Witness Pelton, were duly received in evidence.)

Cross-examination.

By Mr. Outlaw:

On Exhibit C-168, there are quite a number of items shown on those statements that show operating conditions

in the differential territory are more favorable than on other parts of the system. I arrive at that conclusion by a comparison of the Pecos, Plains and Slaton divisions on the Santa Fe, with the remainder of the divisions listed on those pages. There is no way to separate the common-point and differential territory. However these three divisions include all of the mileage of the Santa Fe in the Texas differential territory except just a few miles of the northern division west of San Angelo. I do not believe as a general thing the short lines show a lower rate of return than the principal line. The rate of return shown on page 9 of this exhibit is based on the Texas Commission's valuation in the return for 1926. I do not know whether it is the valuation of 1926 but it is the return for 1926. In the column headed "stocks and bonds" is shown the rate percent return from operation, based on the value of stocks and bonds as shown in the annual report.

[fol. 761] On page 10 the comparisons shown between certain Southwestern and Northwestern lines is a mathematical average. I believe the six southwestern roads and the six northwestern roads shown in this exhibit are the principal lines in the two territories.

The differential lines shown here have a preponderance of mileage in Texas common-point territories. There is no differential line in Texas that has not a preponderance of mileage in common-point territory unless the Southern Pacific I suppose, has a greater mileage in differential territory than in common-point territory. It is only limited to the G. H. & S. A. It is all the Southern Pacific Lines in Louisiana and Texas. The T. & P. line west of Big Spring would come next, compared with the mileage in common-point.

Of my own personal knowledge I do not know the shipments move on the rates shown in the exhibits from Omaha to these Oklahoma points and Wichita. It is these conditions that we want to bring out and which we think should be removed in this decision. That is the only object in placing this information before the Commission, to show the conditions as they actually exist.

I used the Santa Fe mileage tariff on page 2 of Exhibit 170. The mileage is right.

It wasn't my idea to show the rate comparison exactly as it might be between St. Louis and those points, but to compare the mileage rates along those lines. I endeavored [fol. 762] to show the correct mileage and the correct rate under that mileage between these points, and compared those rates with the 12358 rates.

In regard to the Des Moines question, my idea in inserting that item in Exhibit C170, was just to show how or at what a low rate of revenue the carriers in this territory were willing to haul the stuff. It shows here a revenue net ton-miles on this haul of 1.41 cents, while under the 12358 scale for the same haul it is 2.16 cents.

Petroleum oil moves principally to the Gulf of Mexico and to eastern or northeastern territory.

I would say that the San Antonio division included all of the I. G. N. mileage in differential territory; 120.7 miles lying south of San Antonio between Laredo and Devine, Texas.

Q. So far as you know then these costs that you show on the two divisions in common-point territory, include terminal costs as well as shop costs incurred at points in those divisions or in common-point territory, which although to some extent at any rate, the cost may have been incurred on equipment and other units that were used in hauling traffic in differential territory?

A. I don't know that, but I do know that in their accounting they certainly wouldn't charge up an item to one division where the expense accrued on another.

[fol. 763] Q. That is your assumption?

A. They would be fairly allocated. It doesn't stand to reason—the figures wouldn't be of any use if the expense accrued on one division and was charged up to another.

Q. If I understand your thought then, in order for these figures to be of any value, these expenses would probably have to be allocated to the particular portion of the line for account of which the costs were incurred?

A. That would be my idea of charging the items up, to the proper place.

That part of the G. H. & S. A. Southern Pacific, in Texas, in differential territory, is wholly west of San Antonio and does not include San Antonio terminal. There are several good-sized towns on that part of the line, and Spofford

Junction is a Mexican outlet; considerable traffic moves through Spofford.

[fol. 764] C. A. Ross was thereupon called as a witness, and having been duly sworn, testified in substance as follows:

Direct examination (pro se):

I am rate clerk for the Nebraska State Railway Commission at Lincoln, Nebraska, having been employed approximately fifteen years, handling traffic matters before the Interstate Commerce Commission and several state commissions. I appear today on behaf of the State Railway Commission as well as the state of Nebraska.

Exhibit C-171 is the statement showing the number of head of horses and mules on the farms for 1926, 1927 and 1928, together with their value. On this page Nebraska ranks sixth for the three years. On page 2 of the exhibit is shown the number of horses and mules on the farms and their values, for the year 1927. District No 1 shows a total number of head of 287,775; with a value of $16,625,000 plus, with miles of railroad, 2,337; and the number of head per mile of line, 123; and a value of $7,113 plus. That is in the value of the number of animals per mile of line; not the value per head. The value per head will only run around $82.

The second district shows 151 head per mile of line with a value of $8,000 plus.

The third district shows 223 head per mile of line with a value of $12,000 plus.

District No. 4 shows 144 head per mile of line with a [fol. 765] value of $8,204 plus. This 144 head per mile of line is 117.08 of the number of head per mile of line in the first district, and it is 95 per cent plus of the number of head per mile of line in the second district.

We consider the western portion of Nebraska just as thickly settled with horses and mules as any other portion of the state, and I introduce the exhibit to show that the state of Nebraska ought not to be divided up into two or three sections, as has been done in one or two cases and is contemplated in one or two other cases.

To some extent I would base my reasoning on the similarity of conditions from a view point of density of animals. The traffic density of the entire state ought to be taken into consideration and not certain portions of the state.

Page 5 shows carload shipments of horses and mules received at the South Omaha market for 1927, via all railroads, segregated by months to show what the heaviest months were. There is only one horse and mule commission company in Omaha and that is consolidated with South Omaha figures. The total number of cars is 543, total number of head is 11,272, or an average of twenty-one head per car. 41.18 per cent of these 543 cars were received from the three main roads in Nebraska, the Chicago, Burlington & Quincy Railroad, the Chicago & North Western Railway Company and Union Pacific Railroad Company.

Page 6 is a statement showing the number of horses and mules received at the South Omaha market from the state indicated moving in over the same three main lines, for the year 1927. 229 cars from Nebraska stations were received, [fol. 766] being 47.12 per cent of the total number of cars received for the year. You will note also that Nebraska ranks first in the shipment of horses and mules into the Omaha market; South Dakota ranks second, Wyoming third.

Page 7 is excerpts from the decisions of the Interstate Commerce Commission.

By Mr. Flansburg:

Q. But it was the Interstate Commerce Commission's decision which fixes the rates, and which is the basis under scrutiny in this proceeding, and not the decision of the Nebraska commission.

A. I don't agree with you. I think it was also the decision of the Nebraska commission publishing and prescribing rates from an intrastate point to an intrastate point.

Examiner Simons: It was a joint decision.

The Witness: In connection with the third sentence of the decision of the Interstate Commerce Commission, which was a joint decision with the Nebraska decision, it states that the longer hauls extended in the western portion of the state where the traffic density was much lighter than the

eastern portion. I want to explain how that gradation was made as far as the Nebraska decision was concerned.

I am speaking for the Nebraska Commission. I am not undertaking to say what the Interstate Commerce Commission had in mind.

[fol. 767] The Nebraska decision does not mention the traffic density proposition. The rates finally prescribed for the longer hauls in Nebraska were very materially higher than the rates prescribed for the same length of haul in South Dakota, admittedly a state with lighter traffic density.

At page 8 I cite excerpts from two decisions of the Interstate Commerce Commission showing that rates in the western part of Nebraska in these two cases have not been found to be unreasonable. In one case they were dismissed; the other one, they were compelled to adjust rates between Henry, Neb., and Torrington, Wyo., on account of the prejudice rather than the unreasonableness of the rates. Since that time, these rates have been increased quite materially.

We have a very peculiar situation in Nebraska. We have a scale of rates applying from the country points to the markets on one level. We have a scale of rates applying from the markets on another level; and taking into consideration the 75 per cent stocker rate, we have yet a third level of rates in Nebraska on livestock.

To the lower Missouri River markets and to Sioux City the rates were Interstate Commerce Commission prescribed rates. The other rates were prescribed by the Nebraska Commission into Omaha, South Omaha and Nebraska City. Those rates of the Nebraska Commission were never pre-[fol. 768] scribed by the Interstate Commerce Commission except in its decision in 13273, as a joint proposition. The purely state rates from the markets are lower than the scale prescribed by the Interstate Commerce Commission. I am speaking of the rates moving the traffic to the country points.

The scale to Omaha for a state movement is the same as the scale to Sioux City, Saint Joseph or Kansas City for an interstate movement.

The rates west bound, which are the states rates, are on a somewhat lower scale than the rates east bound except where cross country competition affects the short line mileage. Generally speaking the east bound scale is higher. There are some instances where you will find the other scale

is higher but it is due to the blanket grouping in effect since somewhere around 1886. The Interstate basis generally speaking is higher than the state rates, although not in all cases.

There is considerable movement of livestock for stocker purposes west bound. On stocker and feeder the basis is seventy-five percent of the west bound rates. The movement to the Missouri River is greater by far than from the river. The west bound rates apply on movements in Nebraska under the higher Omaha application. A movement from Norfolk, Neb., down to Superior, Neb., would be on the original Nebraska scale.

On page 9 of the exhibit I have set up statistical data on [fol. 769] movements of horses and mules to the Omaha market. The first column after the stations is the rate per hundred-weight. The next column will show the number of cars, and then I have indicated the distance, the car-miles, and the ton-miles, the revenue, the revenue car-miles, and the revenue ton-miles.

These rates are movements all moved under the rates prescribed in 15273. I want to call your special attention to Seward, about half way down the page, where it shows a revenue car-mile earning of 55.99 cents, and a revenue per ton-mile of 4.87; the next town, Ashland, with 102.22 cents revenue per car-mile.

I used the minimum weight of twenty-three thousand pounds, to get the car mile revenue.

They are short hauls.

Of the cars moving in on the C. B. & Q. there were a total number of cars, 57, with an average haul of 176.5 miles, average revenue per car mile of 33.34 cents; and the average revenue per ton-mile was 2.87 cents. Those are the actual distances, and the ones that controlled the rates. This purports to be a statement showing the entire movement from Nebraska stations over the Burlington for the year 1927.

Page 10, is the movement via the Chicago & North Western Railway into South Omaha, and shows the same data with a total number of cars of 99. The average haul is considerably longer, 215.2; and the average car-mile earning [fol. 770] is somewhat less, 27.82 cents. The revenue per ton-mile is somewhat less, probably accounted for by the longer average haul. That is the total movement from C. & N. W. stations into South Omaha for the year 1927, Nebraska alone, not the M. & O.

Page 11 is the movement into South Omaha via the Union Pacific Railroad from Nebraska stations for the year 1927.

You will note there that the total number of cars was 70; the average haul was considerably longer than any of the other two lines, namely 241.4 miles; the revenue per car-mile, 27.40 cents; and the revenue per ton-mile, 2.39.

There was a peculiar thing about this movement. In the 28 cars originating in the fourth district mentioned on page 2, or approximately 40 per cent, the third district originated only 8 cars of 11.43 per cent; the second district, 26 cars, 37.14 per cent; and from the first district, 8 cars, 11.43 per cent.

Apparently thirteen cars out of fifty-seven on the Burlington moved from the fourth district into Omaha and twenty-five from the first district. That constituted about fifty per cent of the tonnage on the Burlington, but they moved but 57 cars as against the movement of 70 cars by the Union Pacific and 99 cars by the North Western.

(Statement No. 21805 of the Bureau of Statistics was incorporated in the record by stipulation.)

I desire to file with the privilege of supplying additional [fol. 771] copies a photostatic copy of page 8 of Mr. Wettling's Exhibit No. 43, in I. C. C. Docket 17000, Ex Parte 87, of the 59 roads—a commodity traffic statistic statement for the year 1924.

Mr. Outlaw: I will state for the record that I will withdraw my objection to the admissibility of page 12 of Exhibit C-171, if it be understood that upon brief and subsequent argument of this case I may refer to either the direct or cross-examination of Mr. Wettling, referring to this exhibit which he offered in Docket 17000, part 1, where the exhibit was put in.

Examiner Carney: Is that agreeable to the other side?

The Witness: That is perfectly agreeable to me, your Honor. Now, the sole purpose of this page 12 is to show that the revenue per car-mile was for the C., B. & Q. for 1924 as a system, for the Union Pacific, 1924, as a system; and the C. & N. W. Railway for 1923, and the 59 roads in western district for 1924 on horses and mules.

Also to compare the figure of 24.13 cents for the C., B. & Q. system as against the actual car-mile earnings on actual shipments in Nebraska for 1927 of 33.34 cents. For

the Union Pacific system, 25.75 cents per car mile as against the figure of 27.40 cents on actual movements. You will find that figure and the other figure that I am reading, over on these three previous pages. For instance, on page [fol. 772] 9 will be found the revenue per car mile of 33.34 cents for the C., B. & Q.; down in the middle section of the sheet, the second line above the word "authority".

The Nebraska figures are all single-line hauls and represent total earnings under a rate, while the figures from the Wettling exhibit represent entire system earnings, including the divisions of joint rates as well as the single-line hauls. You would have some variations on that account, even on the general level of rates. We feel that in Nebraska these rates are probably too high as compared to the same general level of rates.

The second portion of this page is set up to show the car-mile earnings and revenue ton-mile earnings on various commodities, loading approximately the same as horses and mules, and it is for the 59 roads or systems for the year 1924.

Pages 13 and 14 may be taken together.

There I have set up the scales prescribed by the Interstate Commerce Commission and the eastern livestock case of 1926, South Dakota livestock case, Nebraska livestock case; and you will notice, "Northern Nebraska," and "Southern Nebraska" under "Nebraska," which indicates that a scale of rates for the northern portion of Nebraska was prescribed and a different scale for Southern Nebraska.

The Northern Nebraska scale was prescribed so as to eliminate a severe jump or spread in the rates from South [fol. 773] Dakota as compared to Nebraska, and was approximately 5 per cent under the South Dakota scale up to 350 or 325 miles. From that point on the rate was materially greater than the scale of rates prescribed for South Dakota. The southeast case scale, and the North Missouri case scale; these are distance scales prescribed as reasonable rates, with the exception of the rates in Nebraska; they were not prescribed as reasonable rates. In making rates on horses and mules the percentages prescribed by the commission in these various decisions have to apply. The Southeast case is I. & S. Docket 1563, 74 I. C. C. 419. That rate was suggested by the commission.

They approved the compromise scale, permitted it to go into effect.

These scales provided for Nebraska were prescribed as scales to be used for setting up the rates and not as a distance rate scale. Cross country competition and short-line competition should control the factor. All of these scales are uncommon. The scale rates from Nebraska points to Omaha move more livestock traffic than any other scale prescribed. In 1918 Nebraska shipped 197,338 cars; of those 87,821 cars moved to Omaha; over 1,000 cars moved to Nebraska City; practically 89,000 cars out of the 197,000 cars moved to Nebraska points; to Kansas City, St. Joe and Sioux City over 40,000 cars moved; practically 68 per cent of the entire movement from Nebraska was to those 5 points. The total number of cars of horses and [fol. 774] mules for 1918 from Nebraska to all destination was 2,937 cars; cattle and calves 90,000 cars; hogs 61,000 plus; sheep 34,000 plus, mixed cars 7,679 cars. The total livestock movement was 197,338 cars in 1918. We feel this north and south scale of rates now in effect in Nebraska is somewhat high, but we are willing to have this scale continued in effect regardless of the fact that there is a larger percent of movement on that scale than any other scale prescribed, approved or allowed by the Interstate Commerce Commission. We have no strenuous objection to 115 percent of the cattle scale still applying on horses and mules. I think the same scale should apply in the territory east bound and west bound. I am talking about the scales in general. That is what I understood the question ran to, the general scale. As a matter of fact there isn't a terrific volume of movement of horses and mules; the farms are being depleted; they are much less now than they were a few years ago. They are trucking horses into South Omaha, from all directions.

I said we would be satisfied to leave the scale as it stands. There are some strings attached to that. We feel that that scale could be ironed out and make the gradation a little more uniform throughout the entire scale.

Page 15 of this exhibit shows the average cost per net ton miles is less in the portion west of Missouri River than east of the Missouri River, and that livestock traffic den- [fol. 775] sity, considered together with the cost, the rates west of the river should be on a lower basis than the rates

east of the river; that we should have a scale about the same as the Dimmitt-Caudle-Smith scale operative in Missouri to the St. Louis markets.

Cross-examination.

By Mr. Outlaw:

The report of the Bureau of Statistics of the Interstate Commerce Commission, I have been asked to stipulate into this record as exhibit No. C-172. The level of freight rate should be governed more largely by the density of the particular commodity than by the density of all traffic within a given territory. The rate should be lower where the livestock traffic density is higher, notwithstanding the unit costs which are the results of the operation as to all traffic. I wouldn't say that horses and mules should move at a much cheaper rate than other livestock because there isn't much movement. Say, in the western district you have a livestock traffic density double that in the eastern district, you should have materially lower rates on livestock in the western district, although your traffic density of all traffic was in the western district only half of that in the eastern district.

Q. Now, if that be true, why wouldn't you make very materially higher rates on horses and mules than on other livestock by reason of the fact that the horse and mule density was such a small percentage of the density of other livestock?

A. That might be true but for the fact that they use the same equipment and have perhaps the same services that other livestock have. I think personally that they should be related. Now, I wouldn't say that horses and mules should move at a much cheaper rate than other livestock because there isn't much movement. You might as well admit the truth of that.

Q. Shouldn't they give it a much higher rate by reason of the lighter movement in view of your theory?

[fol. 776] A. Well, that's possibly true; that is, if the operating costs would determine that it should move at a higher rate. But the commission has fixed in 3 or 4 cases, at least, a percentage relationship of horses and mules to the cattle scale; and in view of the general level of the cattle rates, I think that the same scale or same thought

should carry out in establishing the rates on horses and mules.

By Mr. Flansburg:

Q. I believe you stated that in the decision in the Nebraska livestock case the commission did not prescribe those rates as reasonable maximum rates, and in connection with that scale you think a percentage above the cattle rates should apply on horses and mules. Do you think it proper that the commission should prescribe anything other than a reasonable maximum rates on horses and mules?

A. No. If they have got all the facts before them, I think they should prescribe a reasonable maximum rate on horses and mules.

I think if they are going to prescribe a scale for application between various districts that they should be built upon the same plan that they use in the cement case, 8182. The reason I mention that, the rates on horses and mules has been related to the rates on cattle in practically all the decisions.

(Exhibits C-171 and C-172, Witness Ross, were duly received in evidence.)

S. W. W. Carr, was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct examination (pro se):

I am representing the South Dakota Railway Commission. On account of the fact that the Nebraska rates are [fol. 777] in part based upon the South Dakota scales, the South Dakota situation was drawn into the case.

The present rates on horses and mules from South Dakota points were prescribed by the commission in the Live Stock Case, Docket 12268. It is our position that the general level of the livestock rates prescribed in that scale, especially for distances up to 300 miles, are unreasonably high and that there should be no further increases in any of the rates from South Dakota. The present basis of rates from South Dakota is greatly higher than the rates from immediately adjoining Iowa and Minnesota terri-

tory, and is also higher generally than rates for equal hauls from North Dakota, Nebraska and other adjacent states.

Horses and mules in northwestern territory have generally borne some rather definite relationship to the cattle rates. The average horse and mule rates have been approximately 115% of the fat cattle rates and that was the percentage adopted by the commission in the South Dakota case.

One of the major points to be developed at this time is the relationship that horse and mule rates should bear to the edible livestock rates. There has for a long period of years been a decline in the value of those grades of horses most commonly produced in South Dakota, and the producers, or ordinarily farmers, are in an unfavorable economic position.

Page 1 of exhibit C-173 shows the location of the various railroads, the larger stations, livestock markets and [fol. 778] similar data. Page 2 is a map of the state of South Dakota; page 3 shows the number of horses, mules and other classes of livestock in *a* various census districts of the United States. Horses and mules are listed in the same category as horses, but there are relatively few of the higher valued mules in South Dakota and the horses, particularly that portion which is shipped from the state, are largely of a very low grade. It will be noted, that there is a very substantial density per square mile being practically twice as great as in the west-south-contral district. The west-north-central states comprise 17 per cent of the total area of the country and has 34 per cent of the horses. The southwest states comprise 14.4 per cent of the land area and have but 15 per cent of the horses.

When this page was prepared later data was not available but I have since secured figures for 1927. The percentages are somewhat similar throughout. However, the west-north-central states now, or in 1927, and 36.3 per cent of the southwest 10.9 per cent, considerably in excess of 3 times as many. This substantial difference in density might in itself justify a difference in rate level as between the northwest and southwest states.

Page 4 is a sketch indicating the number of head of horses and mules in South Dakota according to the census of 1920 and 1925. The exhibit also indicates the substan-

[fol. 779] tial decrease in the number of horses in 1925 compared with 1920 and this falling off in production is due very largely to the severe decline in prices. This is for the year 1925. Page 5 indicates the serious decline in values of horses and mules during recent years, supporting my statement that the grade of horses produced in and shipped from South Dakota is at the present time substantially lower than the grade produced in and shipped from the adjacent states.

Part 2 shows clearly the serious decline in volume since 1916. Part 3 shows the decline in South Dakota in number of head of horses on farms and part 4 shows the decline in value of horses in the United States as a whole since 1910 contrasted with the increase in value of other classes of live stock.

Parts 1 and 2 of page 6 are based upon the study made by the United States Railroad Administration for the year 1918 and show the movement of horses and mules from South Dakota to the more important destination points and also the total number of cars shipped from representative western states.

The movement of horses from South Dakota is largely to the states to the east, including Iowa, Minnesota, Illinois and the states east thereof and not to the southwest. But 4 cars moved to Kansas City and but 157 cars moved to East St. Louis, out of the total of 1,093 cars. Four hundred and thirty-eight cars were distributed largely to local stations in Minnesota, Illinois and Iowa. Of the 309 cars [fol. 780] shipped originally to Sioux City, the majority were reforwarded to eastern states.

There was no through movement from South Dakota to Fort Worth, Tex., and other southwest markets and my understanding is that there was very little movement of South Dakota horses even from the primary markets to the southwest. It is my opinion that allegations of undue preference were made by the southwest complainants not because of any actual movement of horses from this territory, particularly South Dakota, to the Southwest, but merely for the purpose of attempting to induce the commission to give the Southwest rates more nearly proportioned to those in the Northwest.

My investigation indicates little, if any, actual movement of horses from South Dakota to Fort Worth, Tex., and other southwest points.

Part 2 indicates that the movement of horses from South Dakota is substantially in excess of the volume of movement from other western states, excluding only those states in which are important horse markets. For the year 1927 South Dakota originated 1,745 cars.

Part 3 shows loss and damage claims on horses versus other traffic on the C. & N. W. Railway for the fiscal year ended June 30, 1916; the loss and damage claims on horses were but 84 per cent per car in excess of the loss and damage claims on cattle. The relative value of horses compared [fol. 781] with cattle is less today than it was in 1916, so under similar careful handling the loss and damage claims on horses under present values should not differ substantially from those on cattle.

Page 7 tends to illustrate that loss and damage claims on the Chicago, Milwaukee, St. Paul and Pacific are showing a substantial decline. Page 8 shows the average difference in earnings, the interstate adjustment applying throughout the lines of the Chicago, St. Paul, Milwaukee & Ohio Railway, the adjustment on certain lines in the territory east of the Missouri River on horses over cattle.

I have also made a careful investigation of the relationship of these rates on horses and mules versus cattle, etc., under the present adjustment and under the carrier's original voluntary adjustment. The situation in this connection is outlined in some detail on page 8. Generally speaking, the carriers themselves in their original livestock adjustment, fixed rates on horses and mules less than 115 per cent of the cattle rates, or on substantially that basis.

Item 1, page 8, shows that the average difference in earnings per car, horses over fat cattle, in South Dakota in 1901 under the carrier's voluntary adjustment, was 115.4 per cent. Item 2 shows that the interstate adjustment applying throughout the lines of the C., St. P., M. & O. Railway in 1900 was, on horses, 115.7 per cent of that on cattle. In all cases I have shown the earnings on the same size of [fol. 782] cars. Item 3 shows the adjustment on certain lines in the territory east of the Missouri River 1903. Under those rates the earnings on horses were 120 per cent of those on cattle, but the rates per hundred weight on horses were but 112.4 per cent of those on cattle. Under the Minnesota-Iowa interstate adjustment on the C. & N. W. 1902, shown in Item 4, the difference in earnings was 115.7

per cent and under that of the C., M. & St. P. 1891, Item 5, 112.9 per cent. In Nebraska, 1902, Item 6, it was 113.7 per cent. Item 7 shows the situation for the C. & N. W. system in 1915, before the various rate changes made subsequent to the war. At that time the car-mile earnings on horses for the entire North Western System operations were but 12.5 per cent in excess of the car-mile earnings on cattle.

With further reference to page 8, will state that I have looked into the question of relationship of livestock rates to class rates and my investigation indicates that the horse and mule rates in northwestern territory have never been related to classes and I do not believe there are any grounds whatever for relating horse and mule rates with the rates on class traffic.

We are not concerned with the action that may be taken [fol. 783] in the Southwest but insofar as the northwestern territory is concerned, class-rate traffic and livestock traffic are governed by radically different sets of conditions, competitive, transportation, economic and otherwise.

Page 9 shows various data respecting the movement of horses and mules on representative western lines during 1924.

Part 1 shows the volume of movement, average loading, [fol. 784] average hauls, and the revenues for 59 representative western roads and various individual carriers, whose mileages comprise over 70 per cent of the total railway mileage in South Dakota. The purpose is to show that the earnings derived from the horse and mule traffic of these western lines are very substantial and compare most favorably with the earnings derived from all carload freight and especially from other classes of livestock. The showing is summarized in part 3. Taking the C. & N. W. Railway as representative, the average loading on horses in 1924 was 11.5 tons and on cattle, 11.5 tons. Assuming an average haul of 200 miles, the rates under the 12268 scale were, on horses, 32 cents; on cattle, 28 cents; and based on the average loading the revenue under the 12268 scale on horses exceeds the revenue on cattle by 10.4 per cent.

On page 10 I have shown the rates on cattle sheep, horses and hogs for representative mileages under the Docket 12268 scale, based on the minimum loading of 22,000 pounds on cattle, 23,000 ponds on horses and mules, 16,500 on single-deck hogs and 12,000 on single-deck sheep.

Taking the average situation, the earnings on horses under the 12268 scale are 20.3 per cent greater than on cattle, 76 per cent greater than on single-deck sheep and 39 per cent greater than on single-deck hogs.

The rates themselves on horses and mules are 15 per [fol. 785] cent higher than the rates on cattle but the minimum weight, horses, etc., is 23,000 compared with 22,000 on cattle and the two differences combined result in earnings on horses over 20 per cent higher than the earnings on cattle.

The data on pages 11 and 12 are based on actual movements of horses from representative points in South Dakota to representative destination points during a recent year, to which have been applied the present horse rates; the comparative rates and earnings on cattle also being shown. These figures further indicate that the movement of horses from South Dakota is largely to points in the adjacent states and not to the southwest. They also go far to show that the revenues now received are entirely adequate compared with the revenues received from cattle and also from other classes of freight. On the 108 cars to Iowa points, for example, moving from various points in South Dakota, the average earnings per car-mile were 38.2 for an average haul of 227 miles. To South Omaha, an average haul of 443 miles, earnings under present rates average practically 26.3 compared with 22.6 for cattle.

I might add as an explanation of that Sheet 11, that I based my earnings on an average loading for horses of 11.68 tons, which is that shown by Mr. Wettling in his Exhibit 43 for 59 western roads, Ex Parte 87.

[fol. 786] That was for the year 1918, the latest figures we have available.

Page 13 shows the comparative earnings per car on horses vs. cattle under current tariffs in certain western states. Under the Iowa adjustment the average car earnings on horses exceed those on cattle by 13.9 per cent. The actual difference in the rates is 9 per cent.

In Missouri the horse earnings average 23.5 per cent greater than the cattle earnings, the actual difference in rates averaging 18 per cent.

In Montana the rates are expressed in dollars and cents per car, the horse earnings exceeding the cattle earnings by an average of 8.6 per cent.